This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

debt admitted or proved, has made an immediate decree for payment (*i*).

A legatee's action.

Upon the same principle a legatee has always been permitted to sue on behalf of himself and other legatees: and, even under the old practice, a bill has been admitted by a *person claiming under a general description on behalf of himself and the other persons equally entitled under the same description (*k*).

Remedy in the County Court.

Creditors, legatees (whether specific, pecuniary, or residuary), devisees (whether in trust or otherwise), heirs-at-law or next of kin, can bring actions against executors or administrators in the County Court for an account or administration.

Limit of jurisdiction in the County Court.

The jurisdiction of the County Court is, for this purpose, limited to cases, in which the personal or real, or personal and real estate, against or for an account or administration of which the demand may be made does not exceed in amount or value the sum of 500*l.* (*l*).

Execution of trusts.

The County Court has also jurisdiction in claims for the execution of trusts, in which the trust estate or fund does not exceed in amount or value 500*l.* (*m*).

Transfer from the Ch. Div. to the County Court.

The Chancery Division has concurrent jurisdiction in the above matters with the County Court. Where an action is commenced in the Chancery Division which might have been commenced in the County Court, any of the parties can apply for its transfer to the County Court, and the judge has power on such an application, or without such an application, to make an order transferring the action to the County Court, and thereupon the action proceeds in the County Court as if originally brought there (*n*). It has not been the practice to make such an order of transfer without special reason (*o*).

Creditor suing on

Where administration of personal estate only is sought, a creditor suing need not state himself as suing *on behalf of* *him-

(*i*) Woodgate *v.* Field, 2 Hare, 211.

(*k*) Mitf. Plead. 169, 4th edit. The legatee of an annuity charged upon residue is entitled to administer: Wollaston *v.* Wollaston, 7 Ch. D. 58.

(*l*) 51 & 52 Vict. c. 43, s. 67, sub-s. 1.

(*m*) 51 & 52 Vict. c. 43, s. 67, sub-s. 2. In general the action must be commenced in the court within the district of which any of the defendants dwell or carry on business, or live in, or in the court of the district in which the defendants or one of them dwell or carried on business at any time within six calendar months next before the commencement of the action: 51 & 52 Vict. c. 43, s. 74, and Ann. County Courts Practice, 1893, pp. 68, 538.

(*n*) 51 & 52 Vict. c. 43, s. 69.

(*o*) Picard *v.* Hine, 18 L. T. 704.

self and all the other creditors of the deceased (*p*), and the late Master of the Rolls said it was no longer the practice to sue in such form (*q*); but there is nothing in the rules of the Supreme Court to prevent such a form of action from being adopted, and in practice the plaintiff very often sues in that form. A creditor who sues *on behalf of himself and all other the creditors* is entitled, where the estate proves insufficient for payment of debts, to costs, as between solicitor and client (*r*), and until it is decided that the use of the words is immaterial, it will be wise where a creditor is suing to use this particular form of words.

behalf of himself and all the other creditors.

"If a creditor files a bill on behalf of himself and all the other creditors, and it turns out that the estate applicable to the payment of debts is insufficient, the estate belongs to the creditors exclusively; and, therefore, if a creditor has, for the benefit of all the other creditors, instituted a suit, in which he has recovered a fund, it is extremely unreasonable that the fund which would be divisible among the creditors *pro rata*, should be applied in payment of debts without recouping that creditor what he has properly expended in recovering the fund, and he is clearly entitled to his costs as between solicitor and client, and not as between party and party only" (*s*).

Right of creditor suing on behalf of himself and other creditors to costs:

It is sufficient, if it appears from the statement of claim, that the creditor sues on behalf of all other creditors, although it does not appear on the writ, and the writ need not be amended (*t*).

The rule applies equally to the case of a creditor who obtains the conduct of an action originally commenced by a legatee or next of kin (*u*).

or where he obtains conduct of action.

*Where a creditor sues for administration of the real and personal estate of a testator or intestate, and there is no devise of the real estate to trustees with power to sell and give receipts, it appears that the writ must be indorsed with a claim by the plaintiff "on behalf of himself and all other creditors" (*x*).

Creditor must so claim where there is undevised real estate.

(*p*) Bray *v.* Tofield, 18 Ch. D. 554. Re Blount, 27 W. R. 865.

(*q*) In Bray *v.* Tofield, *supra.*

(*r*) Re Richardson, 14 Ch. D. 611. Re McRea, 32 Ch. D. 613.

(*s*) Kindersley, V.-C., in Thomas *v.* Jones, 1 Dr. & Sm. 134, 136. Cited and approved of by Kay, J., in Re McRea, 32 Ch. D. 613, 615.

(*t*) Eyre *v.* Cox, 24 W. R. 137.

(*u*) Re Richardson, 14 Ch. D. 611.

(*x*) Re Royle, 5 Ch. D. 540. See also Re Vincent, 26 W. R. 94.

There is nothing to prevent other creditors or legatees from instituting a second action for administration; and as it is possible that, before the order, the litigating creditor may stop his action, the court permits the actions to go on together until a decree in one of them is obtained (*y*). So, also, in the case of several persons claiming under the same general description. And when the usual order has been obtained in one of such actions, if another action is instituted, praying no further relief than might be had in the former action, the parties to such former action ought to apply to have the proceedings in the latter action transferred to the judge in whose court the proceedings under the decree are pending, and to have the second action stayed by him (*z*); otherwise the costs of it may be dealt with as costs in their action (*a*).

Staying proceeding in another action.

On the application to stay the proceedings, the question is, whether the action which is sought to be stayed asks something more than could be obtained under the existing order (*aa*). *As, for instance, where more complete and beneficial relief is sought or can be obtained in the second suit (*b*), or further questions raised, such as willful default or breaches of trust (*c*). Even where the second suit goes further than the first, proceedings in the second action have been stayed on the executor or administrator undertaking not to object to any additions to the decree in the first action which the judge may think fit to add in chambers (*d*).

Question on applications to stay.

(*y*) Woodgate *v.* Field, 2 Hare, 211, 214. As to staying proceedings in the other suits, see Hawkes *v.* Barrett, 5 Madd. 17. Turner *v.* Dorgan, 12 Sim. 504. Reid *v.* Territt, 1 Coll. 1. Dryden *v.* Foster, 6 Beav. 146. Frowd *v.* Baker, 4 Beav. 76. Portarlington *v.* Damer, 2 Phill. Ch. C. 262. Duffort *v.* Arrowsmith, 7 De G. M. & G. 434. Harris *v.* Gandy, 1 De G. F. & J. 13.

(*z*) As to applications to stay where one of the actions is in the Palatine Court, see Re Williams, W. N. 1882, p. 6. Townsend *v.* Townsend, 23 Ch. D. 100. Wynne *v.* Hughes, 26 Beav. 377. Re Longdendale Cotton Co., 8 Ch. D. 150.

(*a*) Therry *v.* Henderson, 1 Y. & C. Ch. C. 481.

(*aa*) Rigby *v.* Strangways, 2 Phill. Ch. C. 175. Rump *v.* Greenhill, 20 Beav. 512. Plunkett *v.* Lewis, 11 Sim. 379. See also Suisse *v.* Lowther, 2 Hare, 424. Gwyer *v.* Peterson, 26 Beav. 83. Hoskins *v.* Campbell, 2 Hemm. & Miller, 42. Belcher *v.* Belcher, 2 Dr. & Sm. 444.

(*b*) Re McRae, 25 Ch. D. 16. Bulgen *v.* Sage, 3 M. & Cr. 683. Taylor *v.* Southgate, 4 M. & Cr. 203. Underwood *v.* Jee, 1 Mac. & G. 276. Pickford *v.* Hunter, 5 Sim. 122.

(*c*) Zambaco *v.* Cassavelli, L. R. 11 Eq. 439.

(*d*) Gwyer *v.* Peterson, 26 Beav. 83. Matthews *v.* Palmer, 11 W. R. 610. Van Bunan *v.* Piffard, 13 W. R. 425.

[*1909]

The ordinary practice is to allow the action in which a decree has first been obtained to proceed and to stay the other action (*e*).

General practice.

If the decree has been "snapped," or unfairly obtained (*f*), or the action in which it was obtained improperly instituted (*g*), the court will either not stay the other action or will give the conduct of the action in which the decree has been made, to the plaintiff in the other action (*h*).

Where the decree has been wrongly obtained.

Where the first action is stayed because a decree has been made in a later action, the conduct of the second action will usually be given to the plaintiff in the first action (*i*); it makes no difference in this respect, that one of the actions is in the Palatine Court (*k*). The court will, of course, depart from this rule, on the ground of the special circumstances of the case; for instance, where the court comes to the conclusion that the object of the plaintiff in the first action is not the *bona fide* administration of the estate (*l*).

Conduct of the proceedings.

*In some cases the first action will be partially stayed, and liberty given to the plaintiff in the first action to prove in the second action for what he may eventually establish in the first (*m*).

Partial stay.

Where an order has been made by any judge of the Chancery Division, for the administration of the assets of any testator or intestate, the judge in whose court such administration is pending has power, without any further consent, to transfer to himself any cause or matter pending in any other court or division, brought or continued by or against the executors or administrators of the testator or intestate (*n*). In dealing with a creditor's action, when transferred to him, he will be governed by the same principles as formerly governed the court in staying proceedings in such actions.

Transfer of actions against executors or administrators where an administration order has been made.

The application for transfer of an action brought or continued

(*e*) Seton, 5th edit. 705.

(*f*) Harris *v.* Gandy, 1 D. F. & J. 13.

(*g*) Frost *v.* Ward, 2 D. J. & S. 70.

(*h*) Rhodes *v.* Barret, L. R. 12 Eq. 479.

(*i*) Zambaco *v.* Cassavelli, L. R. 11 Eq. 439. Kenyon *v.* Kenyon, 35 Beav. 300. Belcher *v.* Belcher, 2 Dr. & Sm. 444. Frost *v.* Frost, 2 D. J. & S. 70.

(*k*) Re Swire, 21 Ch. D. 647. Townsend *v.* Townsend, 23 Ch. D. 100.

(*l*) Re Swire, *supra*.

(*m*) Dryden *v.* Foster, 6 Beav. 146. Re Smith's Estate, 33 L. T. N. S. 804. Crowe *v.* Russell, 4 C. P. D. 186.

(*n*) R. S. C. 1883, Ord. XLIX. r. 5. For transfer in other cases, see Ord XLIX.

[*1910]

against an executor or administrator, after an administration order, can be made *ex parte* by any party to either action (*o*). It must be made to the judge who made the administration order (*p*).

The application, how made.

This power of transfer takes the place of the old practice, which was, after a decree for administration had been made, for the judge of the Court of Chancery making the administration decree, to restrain proceedings against the executor or administrator by creditors by granting injunctions against such other creditors.

The action to be transferred must be one brought against the executor *qua* executor, and not one for which the executor is personally liable (*q*).

The old practice was that a plaintiff at law was entitled, unless his claim proved unfounded (*r*), upon the injunction *being granted, to his costs of the action up to the time when he had notice of the decree (*s*). And if the creditor commenced his action at law before bill filed, and then discontinued it, and came in under the decree, he would be entitled to prove his costs at law, in addition to his debt (*t*). He was also entitled to the costs of the motion to restrain him from suing at law (*u*). But he was not allowed the costs of further proceedings at law after actual notice of the decree (*x*), nor in such case his costs of the motion to restrain his proceedings (*y*). If, however, the executor

Right of creditor bringing second action to costs.

(*o*) Ann. Pr. 1893, p. 834.

(*p*) R. S. C. 1883, Ord. XLIX. r. 5.

(*q*) Chapman *v.* Mason, 40 L. T. N. S. 678. See also Re Timms, 26 W. R. 692.

(*r*) King *v.* King, 34 Beav. 10.

(*s*) Dyer *v.* Kearsley, 2 Meriv. 483, note to Terrewest *v.* Featherby. Paxton *v.* Douglas, 8 Ves. 520. Ratcliffe *v.* Winch, 16 Beav. 576. In Drewry *v.* Thacker, 3 Swanst. 541, Lord Eldon said that the usual form in which the order for the injunction was drawn (*i.e.*, "on payment of costs") was improper; inasmuch as the parties entitled to the injunction, if they were required to pay costs as a preliminary, might, from the situation of the assets, be unable to obtain it in time.

(*t*) Goate *v.* Fryer, 3 Bro. Chanc. Cas. 23.

(*u*) Jones *v.* Jones, 5 Sim. 678. But see Anon. 2 Sim. & Stu. 424.

(*x*) Paxton *v.* Douglas, 8 Ves. 521. Curre *v.* Bowyer, 3 Madd. 456. Jones *v.* Brain, 2 Y. & Coll. Ch. C. 170.

(*y*) Curre *v.* Bowyer, 3 Madd. 456. Jones *v.* Brain, 2 Y. & Coll. Ch. C. 170. See Hayward *v.* Constable, 2 Younge & Coll. 43. Moore *v.* Prior, *ibid.* 375. He may be ordered to pay these costs, if, after bringing in his claim under the decree, he proceeds with his own suit: Beauchamp *v.* Lord Huntley, Jacob. 546. Gardner *v.* Garrett, 20 Beav. 469: notwithstanding the suit be in a foreign court: Graham *v.* Maxwell, 1 Mac. & G. 71. He may set off such costs against his costs incurred before notice of the decree: 20 Beav. 469.

[*1911]

took any steps in the action after the plaintiff at law had notice of the decree, the latter would be allowed all his costs at law and also those of the motion for the injunction (*z*). The practice is now substantially the same as before the Judicature Acts (*a*).

With respect to the time within which the injunction should be applied for, it was observed by Lord Lyndhurst (*b*), that any delay in the application before judgment *would, in most cases, properly resolve itself into a mere question of costs.

Time for application.

By sect. 125, sub-s. 4, of the Bankruptcy Act, 1883, where proceedings have been commenced in any court for the administration of the estate of a deceased debtor, such court can, on proof that the estate is insolvent, transfer the proceedings to the Court of Bankruptcy.

Transfer to bankruptcy.

The transfer can be made either on the application of a creditor (*c*), or without any such application (*d*).

A creditor before applying for the transfer of an insolvent estate into bankruptcy must have proved his debt (*e*).

The transfer can be ordered after a judgment for administration has been made (*f*).

The exercise of this power of transfer is discretionary (*g*), and the mere fact that the executor has a right of retainer and a liberty not to plead the Statute of Limitations to a debt, which rights would be recognized in the Chancery Division, but might be taken away by a transfer to the Court of Bankruptcy, is not a ground for the transfer (*h*).

Transfer discretionary.

An estate cannot be administered in a Court of Equity in the absence of a personal representative (*i*).† And, consequently, if it appear that the court cannot give the plaintiff the relief which he asks without an administration of the estate, there must be a personal repre-

An order for administration cannot be made in the absence of a personal representative of the deceased.

(*z*) Turner *v.* Connor, 15 Sim. 630.

(*a*) See R. S. C. Ord. XLIX. r. 5. Morgan & Wurtzburg on Costs, 2nd edit. p. 192. Dan. Ch. Pr. 6th edit. p. 1947.

(*b*) Rouse *v.* Jones, 1 Phill. Ch. C. 464.

(*c*) 46 & 47 Vict. c. 52, s. 125, sub-s. 4.

(*d*) 53 & 54 Vict. c. 71, s. 21, sub-s. 2 (Bankruptcy Act, 1890).

(*e*) Re Weaver, 29 Ch. D. 236.

(*f*) Re York, 36 Ch. D. 233. Senhouse *v.* Mawson, 52 L. T. N. S. 745. Re Briggs, 7 Times Rep. 572.

(*g*) Re Baker, 44 Ch. D. 262. Re Weaver, 29 Ch. D. 236.

(*h*) Re Baker, *supra.* But see Re York, 36 Ch. D. 233.

(*i*) Lowry *v.* Fulton, 9 Sim. 104. Dowdeswell *v.* Dowdeswell, 9 Ch. D. 294.

† See American note at end of this chapter.

[*1912]

DR
AN
IA

A

TREATISE ON THE LAW

OF

EXECUTORS AND ADMINISTRATORS

BY

SIR EDWARD VAUGHAN WILLIAMS,

(Late one of the Judges of her Majesty's Court of Common Pleas).

Ninth English Edition

BY

SIR ROLAND L. VAUGHAN WILLIAMS, KNT.,

(One of the Justices of her Majesty's High Court of Justice).

Seventh American Edition

BY

JOSEPH F. RANDOLPH AND WILLIAM TALCOTT,

(Editors of Jarman on Wills),

OF THE NEW JERSEY BAR.

IN THREE VOLUMES.

VOLUME III.

JERSEY CITY.

FREDERICK D. LINN & CO., LAW PUBLISHERS.

1895.

LIBRARY OF THE
LELAND STANFORD JR. UNIVERSITY.

a 42764

COPYRIGHT, 1893,

BY

JOSEPH F. RANDOLPH.

COPYRIGHT, 1895,

BY

JOSEPH F. RANDOLPH.

TABLE OF CONTENTS.

(References are to English paging).

VOLUME III.

PART III. BOOK V.

OF THE STAMP DUTIES ON LEGACIES AND SUCCESSIONS TO PERSONAL ESTATES. p. 1405.

CHAP. I.—As to the Amount of Duties Payable on Legacies, and Successions. p. 1478.

CHAP. II.—Upon what Subjects the Duties are Payable. p. 1480.

CHAP. III.—By whom the Duties are Payable. p. 1505.

PART THE FOURTH.

OF THE LIABILITIES OF AN EXECUTOR OR ADMINISTRATOR.

PART IV. BOOK I.

OF ASSETS. p. 1517.

CHAP. I.—Of Personal Assets, Legal or Equitable. p. 1518.

CHAP. II.—Of Real Assets: and of the Exoneration of the Real Estate by the Personal: and herewith of the Marshaling of Assets. p. 1553.

SECT. 1.—*Of the Exoneration of the Real Estate by the Personal.* p. 1558.

SECT. 2.—*Of Marshaling the Assets in Favor of Creditors and Legatees.* p. 1585.

PART IV. BOOK II.

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR IN RESPECT OF THE ACTS OF THE DECEASED; AND OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR IN RESPECT OF HIS OWN ACTS.

CHAP. I.—Of the Liability of the Executor or Administrator in Respect of the Acts of the Deceased. p. 1593.

SECT. 1.—*The General Question as to what Claims upon the Deceased Survive against the Executor or Administrator.* p. 1593.

SECT. 2.—*Of Particular Instances where the Executor or Administrator is Liable with Respect to the Acts of the Deceased.* p. 1614.

CHAP. II.—Of the Liability of Executor or Administrator with Respect to his own Acts. p. 1661.

SECT. 1.—*Of the Liability of an Executor or Administrator on his own Contract.* p. 1661.

SECT. 2.—*Of the Liability of an Executor or Administrator in Respect of his own Tortious or Negligent Acts; and herewith of Devastavit, and of Executor's Accounts and Allowances.* p. 1690.

PART THE FIFTH.

OF REMEDIES.

PART V. BOOK I.

OF REMEDIES FOR EXECUTORS AND ADMINISTRATORS.

CHAP. I.—Of Remedies for Executors and Administrators at Law. p. 1773.

CHAP. II.—Of Remedies for Executors and Administrators in Equity. p. 1799.

PART V. BOOK II.

OF REMEDIES AGAINST EXECUTORS AND ADMINISTRATORS. p. 1827.

CHAP. I.—Of Remedies against Executors and Administrators at Law. p. 1828.

CHAP. II.—Of Remedies against Executors and Administrators in Equity. p. 1876.

CHAP. III.—Of Remedies against Executors and Administrators in the Probate Division of the High Court of Justice. p. 1950.

CHAP. IV.—Of Equitable Remedies against Executors and Administrators in the County Court. p. 1954.

*BOOK THE FIFTH.

OF THE STAMP DUTIES ON LEGACIES AND SUCCESSIONS TO PERSONAL ESTATES.

The stamp duties imposed on legacies, and successions to personal estate upon intestacies, are mainly regulated by the statutes 55 Geo. III. c. 184, as modified by the statutes 43 Vict. c. 14, and 44 & 45 Vict. c. 12.[1] It is provided by 55 Geo. III. c. 184, as follows:

[1] COLLATERAL INHERITANCE TAX laws exist in Pennsylvania (1826—revised in 1887); Maryland (1864—revised in 1888); Delaware (1869); New York (1885—revised and amended in 1892); West Virginia (1887); Connecticut (1889); New Jersey (1892–1894); Massachusetts (1891); California (1893); and Michigan (1893). These acts are all framed to apply both to real and to personal property, and to transmission by voluntary act or deed, intended to take effect on the grantor's death, as well as by will or intestate succession.

The constitutionality of such acts as to the requirement of equality in taxation (being rather a tax on the privilege of succession than on the property) was long since discussed and affirmed in Eyre *v.* Jacob, 14 Gratt. 422; Tyson *v.* State, 28 Md. 577. So, as to "due process of law." Matter of McPherson, 104 N. Y. 306.

I. PROPERTY SUBJECT TO INHERITANCE TAX. The American statutes, by their terms, differ materially in their description of the property to be taxed. They provide as follows: in *Pennsylvania*—"all estates * * situated within this state," irrespective of domicil, and all "estates situated in another state, territory, or country," of persons domiciled in Pennsylvania; in *New York*—"any property, real or personal, * * when the transfer is by will or by the intestate laws of this state, from any person dying seized or possessed of the property while a resident of the state," and "property within the state," "when the transfer is by will or intestate law, * * and the decedent was a non-resident of the state at the time of his death," and "property within the state whenever the transfer is by deed or grant," "in contemplation of death," or "intended to take effect in possession or enjoyment at or after such death"; in *New Jersey*, *Michigan*, and *California* substantially as in New York; in *Maryland*—"all estates * * passing from any person who may die seized or possessed thereof, being in this state, or * * transferred by deed, * * &c."; in *Connecticut* and *Massachusetts*—"all property within the jurisdiction of this state, whether belonging to inhabitants of this state or not, and whether tangible or intangible."

a. *Personal property of decedents domiciled in the state at the time of their death.* So far as relates to such property within the limits of the taxing state, its jurisdiction and powers are unqualified, although the heir or legatee is a resident and citizen of a foreign state. Mager *v.* Grima, 8 How. 490; State *v.* Dalrymple, 70 Md. 294. The right to tax the succession to *personal*

Where the Testator, Testatrix, or Intestate, shall have died after the 5th day of April, 1805 (*a*).

For every legacy, specific or pecuniary, or of any other description, of the amount or value of 20*l.* or upward (*b*) given by any will or testamentary instru*ment, of any person, who shall have died after the 5th day of April, 1805, either out of his or her personal or mov-

(*a*) For the duties payable when the testator or intestate died on or before April 5th, 1805, see Schedule, Part III. of 55 Geo. III. c. 184, and former editions of this Work.

(*b*) The exemption from duty of legacies or residues under the amount or value of 20*l.* has been abolished by sect. 42 of the Customs and Inland Revenue Act, 1881 (44 & 45 Vict. c. 12), which provides that: "Subject to the relief from legacy duty given by sect. 13 of the Customs and Inland Revenue Act, 1880, every pecuniary legacy or residue or share of residue under the will or intestacy of a person dying on or after the 1st day of June, 1881, although not of an amount or value of twenty pounds, shall be chargeable to the duties imposed by the said Act of the 55th year of King George the Third, chapter 184, as modified by this Act." The sect. 13 of the Customs and Inland Revenue Act, 1880 (43 Vict. c. 14), referred to, provides that where the whole personal estate does not amount to 100*l.* no legacy duty shall be charged on any part of it, and by implication from sect. 27 of the act of 1881, all estates of or under the value of 100*l.*

---

property of a decedent domiciled in such state at the time of his death, *wherever it may be situated*, is sustained by authority. See p. *1496, *infra*. See, too, Matter of Swift, 137 N. Y. 80, though it has been taxed in the foreign jurisdiction. So, though the will was not probated in the state of domicil and the succession was taxed elsewhere. Matter of Strong, 17 N. J. L. J. 284. But personal property in another jurisdiction, insufficient to satisfy local indebtedness there, is not to be reckoned for taxation; Commonwealth *v.* Coleman, 52 Pa. St. 448. Although the rule is relaxed in such case, the title to personal property by succession depends, in general, on the laws of the domicil state, and its recognition and enforcement in the courts of that state must depend on the conditions and charges imposed by those laws. The ability of the state to collect such tax, where the "successor" and the property are both beyond its jurisdiction, is quite another question. The Maryland statute relates only to property "being in this state," and no other property is taken into account there. State *v.* Dalrymple, 70 Md. 294.

b. *Real property of decedents domiciled in the state at the time of their death.* As to lands lying in the taxing state, its own laws govern, and no question arises as to the right of taxation or the power to enforce it. As to lands lying beyond its jurisdiction, the power to enforce the tax against the land is wholly wanting, and the title by succession depends on the local law where the land lies, and not on that of the late owner's domicil. The collateral inheritance tax cannot therefore reach such property, Commonwealth's Appeal, 129

[*1406]

able estate, or out of or charged upon his or her real or heritable estate (*c*), or out of any moneys to arise by the sale, mortgage or other disposition of his or her real or heritable estate, or any part thereof, and which shall be paid, delivered, retained, satisfied or discharged after the 31st day of August, 1815:

Also, for the clear residue (when devolving to one person) and for every share of the clear residue (when devolving to two or more persons), of the personal or movable estate, of any person, who shall have

are now free from probate duty. And further, by sect. 36 of the act of 1881 (44 & 45 Vict. c. 12), the payment of the sum of thirty shillings for the fixed duty on the affidavit or inventory in conformity with sect. 33 of that act, shall be deemed to be in full satisfaction of any claim to legacy duty or succession duty in respect of the estate or effects to which such affidavit or inventory relates. The result is that estates under 100*l.* in value pay neither probate duty nor legacy duty, and estates not exceeding 300*l.*, on paying the thirty shillings duty, are free both from legacy and succession duty. All these provisions apply only to the case of testators or intestates dying on or after June 1st, 1881, with the exception of the provision for relief of estates under 100*l.* from legacy duty, which applies to the estates of persons dying after March 24th, 1880.

(*c*) But now by sect. 21 (2) of 51 & 52 Vict. c. 8, it is enacted that legacies payable out of or charged upon real estate or the proceeds thereof are not to be chargeable with legacy duty but with succession duty.

Pa. St. 338; Commonwealth *v.* Coleman, 52 Pa. St. 468; Matter of Wolfe, 19 N. Y. St. Rep. 263; S. C. 6 Dem. 268; and although the devisee and the testator are both citizens of the taxing state. Commonwealth's Appeal, *ubi supra.* If the will directs the conversion of the foreign land into money, it is considered to be personalty, and the succession to it as such is subject to tax. Miller *v.* Commonwealth, 111 Pa. St. 321; Matter of Howard, 5 Dem. 486. But selling it under a mere form of sale is not sufficient, although the executor brings the proceeds into the taxing state. Drayton's Appeal, 61 Pa. St. 172. In the absence of a will, the land will descend by the laws of its own state, and not "by the intestate laws" of the taxing state, and would therefore not come within the terms of the act.

c. *Personal property of non-resident decedents found within the taxing jurisdiction.* As to such property these statutes seem to be in conflict with the rule that the personal property follows the law of the owner's domicil. The American statutes have been generally upheld in the courts of the taxing state as effectually changing the common law rule above stated. State *v.* Dalrymple, 70 Md. 294; Alvany *v.* Powell, 2 Jones Eq. 51. This construction is, however, confined in Pennsylvania to "tangible" property, and not extended to government bonds of a foreign testator found in Pennsylvania and going into the general residue of his estate, Orcutt's Appeal, 97 Pa. St. 179; and was not allowed to the New York act of 1885 (now changed to permit it). Matter of Euston, 113 N. Y. 174. In England, as noted in the text (pp. *1501 *et seq.*), the courts have applied the old rule and

died after the 5th day of April, 1805 (after deducting debts, funeral expenses, legacies and other charges first payable thereout), whether the title to such residue, or any share thereof, shall accrue by virtue of any testamentary disposition, or upon a partial or total intestacy; where such residue, or share of residue, shall be of the amount or value of 20*l.* or upward, and where the same shall be paid, delivered, retained, satisfied or discharged after the 31st day of August, 1815:

And also for the clear residue (when given to one person) and for every share of the clear residue (when given to two or more persons)

---

left such property untaxed. Personal property of a non-resident intestate, although found within the taxing jurisdiction, does not, however, pass to next of kin "under the intestate laws" of that state, and would therefore seem not to be covered by the language of such statutes. Matter of Tulane, 51 Hun 213. The language of the act of 1885 has been since changed in New York, to cover such property. Matter of Romaine, 58 Hun 109.

d. *Real property situated within the taxing jurisdiction of a non-resident decedent.* Such property is clearly within the jurisdiction of the statute.

e. *Exempt property.* The Succession Tax applies to government bonds and other securities exempted by law from direct tax. Strode *v.* Commonwealth, 52 Pa. St. 181; Wallace *v.* Myers, 38 Fed. Rep. 184. In New York it applies only to the "transfer" of property of the value of $500 or over. In other states, "estates" are excepted, of the value of $250 in Pennsylvania, of $500 in Maryland, California, Michigan, and New Jersey, of $1000 in Connecticut, and of $10,000 in Massachusetts. A legacy to a creditor in payment of a legal debt is not subject to the inheritance tax, Matter of Rogers, 38 N. Y. St. Rep. 943; Quin's Estate, 13 Phila. 340; although a legacy for services gratuitously rendered would be. Gibbon's Estate, 16 Phila. 218.

II. Persons Subject to Inheritance Tax. The statutes are made applicable generally to all beneficiaries, individual or corporate, except those specifically exempted. These exemptions are somewhat wider than those of the English statutes cited in the text.

1. *Parents.* Parents are absolutely exempted in New Jersey, Maryland, Massachusetts, California, Michigan, Pennsylvania, and Connecticut, and, until 1892, in New York. This exemption is now changed in New York to a tax of one per cent. where the "transfer" is personal property of the value of $10,000 or more.

2. *Husband and Wife.* Same exemption as parents.

3. *Brothers and Sisters.* Same exemption as parents.

4. *Lawful Descendants.* Same exemption as parents.

5. *Adopted Children.* In New York, Massachusetts, Michigan, California, and Connecticut, the exemption in New York being limited like that of parents. In the absence of such provision adopted children are not included in the term children or descendants, Matter of Miller, 110 N. Y. 216; although the statute may give them a right to inherit. Commonwealth *v.* Nancrede, 32 Pa. St. 389. And to bring the person within the exemption there must be a legal adoption. Matter of Spencer, 1 Connoly 208.

of the moneys to arise from the sale, mortgage, or other disposition of any real or *heritable estate, directed (*d*) to be sold, mortgaged, or otherwise disposed of, by any will or testamentary instrument of any person who shall have died after the 5th day of April, 1805 (after deducting debts, funeral expenses, legacies and other charges first made payable thereout, if any), where such residue, or share of residue, shall amount to 20*l.* or upward, and where the same shall be paid, retained or discharged after the 31st day of August, 1815 :

Where any such legacy or residue, or any share of such residue, shall have been given, or have devolved, to or for the benefit of *a child of the deceased, or any descendant of a child of the deceased,* or to or for the benefit of *the father or mother, or any lineal ancestor of the deceased ;* a duty at and after the rate of one pound per centum on the amount or value thereof (*e*). 1*l.* per cent.

(*d*) As to the construction of this word, see the cases collected, *post*, pp. *1487, *1488.

(*e*) But by sect. 41 of the act of 1881, it is provided that : " In respect of any legacy, residue, or share of residue payable out of, or consisting of any estate or effects according to the value whereof duty shall have been paid on the affidavit, or inventory, or account, in conformity with this Act, the duty at the rate of one pound per centum imposed by the Act of the 55th year of King George the Third, chapter 184, shall not be payable."

---

6. *Descendants of Adopted Children.* In Connecticut, Massachusetts, Michigan, and California.

7. *Quasi-adopted Children.* In New York, where the relation of parent and children has been mutually acknowledged for ten years, and with the same limitation as the exemption of parents.

8. *Illegitimate Children.* Such children are not brought within the statute by an act legitimating them after the death of the decedent. Galbraith *v.* Commonwealth, 14 Pa. St. 258 ; Commonwealth *v.* Stump, 53 Pa. St. 132.

9. *Son's Wife or Widow.* In New Jersey, New York, Massachusetts, Michigan, California, Pennsylvania, and Connecticut, with the same limitation in New York as the exemption of parents.

10. *Daughter's Husband.* In New York, New Jersey, Massachusetts, Michigan, California, and Connecticut, with the same limitation in New York as the exemption of parents.

11. *Executors and Trustees.* Legacies in lieu of commissions are exempted to the extent of taxable commissions in New York, or of a reasonable compensation in New Jersey, Massachusetts, Pennsylvania, and Connecticut.

12. *Charitable and Religious Corporations.* In New Jersey, religious, benevolent and charitable institutions are exempt. In Connecticut, there is a general exemption in favor of " some charitable purpose or purpose strictly public within this state." In New York, " any property * * devised or bequeathed to any person who is a bishop, or to any religious corporation," is exempted by the act of 1892. Formerly, by the act of 1887, the exemption covered " the societies, corporations,

Where any such legacy or residue, or any share of such residue, shall have been given, or have devolved, to or for the benefit of *a brother or sister of the deceased, or any descendant of a brother or sister*

---

and institutions now exempted by law from taxation." This act (now repealed) gave rise to much discussion and judicial definition (see Dos Passos on Collateral Inheritance Taxes, pp. 50–64), which are probably not applicable to the present statute, inasmuch as general exemption from taxation will not ordinarily exempt from the inheritance tax, Miller *v.* Commonwealth, 27 Gratt. 110; especially where the exemption related only to real estate, and the legacy was bonds given "toward the building of a new church," and where the act exempting other personal property was passed after testator's death. Sherrill *v.* Christ Church, 121 N. Y. 701, revg. Matter of Van Kleeck, 55 Hun 472. This exemption, it seems, is confined to New York corporations, Dos Passos Coll. Inher. Tax 64; if not to New York bishops. In California, "societies, corporations, and institutions" exempt from taxation. In Massachusetts, "charitable, educational, or religious societies or institutions" exempt from taxation.

III. Rate, Interest, and Appraisement. The rate of tax is two and one-half per cent. in Maryland and five per cent. in New York, New Jersey, Pennsylvania, California, Massachusetts, Michigan, and Connecticut. Persons otherwise exempt are subject to a tax of one per cent. on amounts exceeding $10,000 in New York and $5000 in Michigan.

Interest. In Connecticut, the tax is payable one year after letters issued, after which time nine per cent. interest is added. In Pennsylvania, twelve per cent. interest is added after the first year, and a discount of five per cent. allowed on payment within three months. In New Jersey, ten per cent. interest is charged from the death of the decedent, and a discount of five per cent. allowed on payment within nine months. So in New York, except that the ten per cent. rate goes into effect only after eighteen months. Both in New York and New Jersey the executor, administrator, or trustee deferring payment after the time fixed for the payment of the higher rate of interest is required to furnish security for the payment of the tax. A remainderman may defer payment of the tax until the time of possession, giving security in such case in New York, New Jersey, and Pennsylvania, the tax on future gifts drawing interest in New York and New Jersey from the decedent's death, in Connecticut from one year after his death, and in Pennsylvania only from the time of its taking effect in possession. But in New Jersey the right to defer payment seems to be confined to remainders limited after a life estate given to relatives who are exempted from the succession tax. Where both life tenant and remainderman are subject to the tax, it will be apportioned and deducted from the income and the principal respectively, although the deduction from the principal will incidentally reduce the life income. Matter of Johnson, 6 Dem. 146.

A judicial valuation or *appraisement* is provided for by the statutes in force in New York, New Jersey, Maryland, California, Massachusetts, Michigan, Connecticut, and Pennsylvania, including also life estates and remainders, and apportionment between them. If the life tenant is exempt, the remainderman pays the entire tax, although the time of payment is postponed. Com-

of the deceased: a duty at and after the rate of three pounds per centum on the amount or value thereof 3*l.* per cent.

Where any such legacy or residue, or any share of such residue, shall have been given, or have devolved to or for the benefit of *a*

---

monwealth's Appeal, 127 Pa. St. 438. But partition of the land is not an apportionment of the tax among the co-tenants, and the tax will be barred against all by twenty years' non-claim by the state. Mellon's Appeal, 114 Pa. St. 570. Where, however, the immediate appraisement of a contingent remainder is impossible, by reason of the uncertainty in the amount, it is, of course, not required, Nieman's Estate, 131 Pa. St. 346; irrespective of whether it can be made at a later time or not. Matter of Cager, 111 N. Y. 343; Matter of Hopkins, 6 Dem. 1. But if the contingency is as to the person and not as to the amount, it may be appraised, while the question still remains open whether it will be subject to tax, Matter of Clark, 1 Connoly 431; and the appraisement may be reserved until the contingency happens, Matter of Wallace, 18 N. Y. St. Rep. 387; so, where the persons are afterward ascertained by the exercise of a power of appointment, Matter of Stewart, 30 N. Y. St. Rep. 738.

IV. Collection and Enforcement. The American statutes in general require the executor to deduct the tax (Connecticut) before payment of a money legacy, or to secure and retain it upon delivery of a specific bequest (New York, Massachusetts, Michigan, California, New Jersey, and Pennsylvania), and make the personal representative or trustee liable for its payment (New York, New Jersey, Pennsylvania, and Maryland), forfeiting his commission in Maryland for delay beyond thirteen months. In New York, Michigan, California, and Pennsylvania, the tax is made a lien on all assets. So, in Maryland, on real estate devised; and in New York, New Jersey, and Connecticut, as to remainders after an exempt life estate; and in New York, New Jersey, Pennsylvania, and Connecticut, as to legacies charged on real property, enforceable like the legacy by sale of the land. In Connecticut, California, Michigan, Massachusetts, New York, and New Jersey, the administrator may apply for sale of lands to pay the succession tax in the same manner as to pay debts. When the transferred estate consists of stocks or loans in a local corporation (or in New York, deposits in a local bank or safe deposit company), the corporation is made liable (in New York, New Jersey, and Pennsylvania) for the tax if it suffers removal or transfer by a foreign executor or administrator, without its payment. Besides this, in New York, New Jersey, Connecticut, and Pennsylvania, the executor, administrator, or trustee is required to take an official receipt for the payment, and to file it as a voucher with his account; and in Connecticut the estate cannot be settled until such vouchers are produced. In New York, New Jersey, Pennsylvania, and Maryland, provision is also made for official proceedings of a summary character against the executor or trustee to compel the payment of the tax.

For other cases under New York statute see Dos Passos on Collat. Inher. Tax.

brother or sister of the father or mother of the deceased, or any descendant of a brother or sister of the father or mother of the deceased; a duty *at and after the rate of five pounds per centum on the amount and value thereof 5*l.* per cent.

Where any such legacy or residue, or any share of such residue, shall have been given, or have devolved to or for the benefit of *a brother or sister of a grandfather or grandmother of the deceased, or any descendant of a brother or sister of a grandfather or grandmother of the deceased;* a duty at and after the rate of six pounds per centum on the amount or value thereof 6*l.* per cent.

And where any such legacy or residue, or any share of such residue, shall have been given, or have devolved to or for the benefit of any person, *in any other degree of collateral consanguinity to the deceased* than is above described, or to or for the benefit of *any stranger in blood to the deceased;* a duty at and after the rate of ten pounds per centum on the amount or value thereof 10*l.* per cent.

And all gifts of annuities, or by way of annuity, or of any other partial benefit or interest, out of any such estate or effects as aforesaid, shall be deemed legacies within the intent and meaning of this schedule.

And where any legatee shall take two or more distinct legacies or benefits under any will or testamentary instrument, which shall together be of the amount or value of 20*l.*, each shall be charged with duty, though each or either may be separately under that amount or value.

EXEMPTIONS.

Legacies and residues, or shares of residue, of any such estate or effects as aforesaid, given or devolving to or for the benefit of the husband or wife (*f*) of the *deceased, or to or for the benefit of any of the Royal family.

And all legacies which were exempted from duty by the act passed in the 39th year of his Majesty's reign, c. 73, for exempting certain

(*f*) A legacy, in order to fall within this exception, must be for the *absolute* benefit of the husband or wife: Therefore bequests by a husband to his wife "for her and her family," or "to maintain her and our children," if they are given so as to create a trust as between the widow and children (see the cases collected, *ante*, pp. *989, *990), are liable to the duty in respect of the interests of the children: Re Harris, 7 Exch. 344. See also Newill *v.* Newill, L. R. 7 Ch. 253. Mackett *v.* Mackett, L. R. 14 Eq. 49.

specific legacies given to bodies corporate, or other public bodies, from the payment of duty (*g*).

By section 8 of the statute, it is provided, that all the powers and provisions, clauses, regulations, and directions, fines, forfeitures, pains and penalties, contained in the former acts relating to the repealed duties, shall extend to the duties granted by the present (*h*). It is therefore necessary to recur to the provisions of the earlier statutes.

Powers and provisions of former Acts to extend to 55 Geo. 3, c. 184.

By the statute 20 Geo. III. c. 28, certain stamp duties were imposed for every receipt or other discharge for any legacy left by any will or other testamentary instrument, or for any share or part of a personal estate divided by force of the Statute of Distributions, or the custom of any province or place; and by section 3, it was enacted, that no such receipt unstamped should be pleaded or given in evidence in any court.

20 Geo. 3, c. 28.

By the statute 23 Geo. III. c. 58, additional stamp duties were imposed: And by section 8, it was enacted, that the receipts, &c., should be stamped before written upon.

23 Geo. 3, c. 58.

By the statute 29 Geo. III. c. 51, additional duties were imposed, which, as well as the duties imposed by the preceding acts, were repealed by the statute 36 Geo. III. c. 52.

29 Geo. 3, c. 51.

By these statutes, it will be observed, the duties were imposed merely on the *receipts* for legacies and shares of *residue: But this mode of imposition was found to be disadvantageous to the revenue; inasmuch as, if executors or administrators chose to rely on the good faith of legatees or next of kin, and to run the risk of taking no receipts from them, the duties were altogether evaded (*i*).

To obviate this, the statute 36 Geo. III. c. 52, after repealing the preceding duties, imposes new ones, not upon the receipts, but upon the legacies and shares of residue themselves: And after enacting, by section 27, that no legacy, &c., shall be paid without a receipt, proceeds, by section 28, to lay a penalty on persons paying or receiving legacies, &c., without receipts stamped in pursuance of the act: But it is provided, by section 41, that the receipt so stamped shall not be required to have a receipt stamp also.

Stat. 36 Geo. 3, c. 52.

As a due compliance with the provisions of this act of parliament

(*g*) See *post*, pp. *1495, *1496.

(*h*) See this section stated *verbatim*, *ante*, p. *534.

(*i*) See Green *v.* Croft, 2 H. Black. 33, 34. Hill *v.* Atkinson, 2 Meriv. 53.

is so necessary for the proper performance of the office of executor or administrator, it is judged expedient to insert in this place, *verbatim*, some of its most material enactments.

Duties to be paid by executors or administrators, on retaining or paying legacies.

By section 6, it is enacted, "That the duties hereby imposed shall, *in all cases in which it is not hereby otherwise provided*, be accounted for, answered, and paid (*k*) by the *person or persons having or taking the burthen of the execution of the Will or other testamentary instrument, or the administration of the personal estate of any person deceased upon retainer for his, her, or their own benefit, or for the benefit of any other person or persons, of any legacy or any part of any legacy, or of the residue of any personal estate, or any part of such residue, which he, she, or they shall be entitled so to retain, either in his, her, or their own right, or in the right or for the benefit of any other person or persons; and also upon delivery, payment, or other satisfaction or discharge whatsoever, of any legacy, or any part of any legacy, or of the residue of any personal estate, or any part of such residue (*l*), to which any other person or persons shall be entitled; and in case any person or persons, having or taking the burthen of such execution or administration as aforesaid, shall retain for his, her, or their own benefit, or for the benefit of any other person or persons, any legacy, or any part of any legacy, or the residue of any personal estate, or any

(*k*) By sect. 12 of the Customs and Inland Revenue Act, 1880 (43 Vict. c. 14), it is provided as follows: "When an executor, administrator or trustee shall have given notice in writing to the Commissioners of Inland Revenue for any claim to legacy duty or succession duty in respect of any fund in his hands which he intends to distribute, and shall have delivered to the Commissioners all particulars which they may require in order to ascertain the existence and extent of any such claim, he shall be at liberty to distribute the fund amongst the parties entitled thereto, after satisfaction of any claims to duty made by the Commissioners, and shall be entitled to receive from them a certificate discharging him from his liability to any duty in respect of the fund. Such certificate shall not in any way affect the liability of any person other than the person in whose favor it is expressed to be given." By 52 & 53 Vict. c. 7, s. 14, it is provided that no person shall under a testamentary document admitted to probate, or under letters of administration, or under a confirmation, be liable for payment of any legacy or succession duty, or duty imposed by the act, after six years from the settlement of the account in respect of which the duty is payable, where such account was in all respects a full and true account. And trustees, executors and administrators are not to be liable after six years if it be proved to the commissioners that the account rendered was correct to the best of their knowledge.

(*l*) See Att.-Gen. *v.* Dardier, 11 Q. B. D. 16, and sect. 22, *post*, p. *1423.

part of such residue, which such person or persons shall be entitled so to retain, either in his, her, or their own right, or in the right or for the benefit of any other person or persons, and upon which any duty shall be chargeable by virtue of this Act, not having first paid such duty, or shall deliver, pay, or otherwise howsoever satisfy or discharge any legacy, or any part of any legacy, or the residue of any personal estate, or any part thereof, to which any other person or persons shall be entitled, and upon which any duty shall be chargeable by virtue of this Act, having received or deducted the duty so chargeable, then and in every of such *cases, the duty which shall be due and payable upon every such legacy, and part of legacy, and residue, and part of residue respectively, and which shall not have been duly paid and satisfied to his Majesty, his heirs and successors, according to the provisions of this Act, shall be a debt of such person or persons having or taking the burthen of such execution or administration as aforesaid, to his Majesty, his heirs and successors; and in case any such person or persons, so having or taking the burthen of such execution or administration as aforesaid, shall deliver, pay, or otherwise howsoever satisfy or discharge any such legacy or residue, or any part of any such legacy or residue, to or for the benefit of any person or persons entitled thereto, without having received or deducted the duty chargeable thereon (such duty not having been first duly paid to his Majesty, his heirs or successors, according to the provisions herein contained), then and in every such case such duty shall be a debt to his Majesty, his heirs and successors, both of the person or persons who shall make such delivery, payment, satisfaction, or discharge (*m*), and of the person or persons to whom the same shall be made" (*n*).

If duty be not paid before legacies are retained by executors, or discharged, they having deducted it, the amount to be a debt from them to his Majesty; and if they pay legacies without deducting the duty, it shall be a debt from both parties.

36 Geo. 3, c. 52.

Sect. 7. "That any gift by any Will or testamentary instrument of any person dying after the passing of this Act, which shall, by virtue of such Will or testamentary instrument, have effect, or be satisfied out of the personal

What shall be deemed legacies within the intent of this Act.

(*m*) The Succession Duty Act, 16 & 17 Vict. c. 51, contains no similar provision charging the executors, but makes the duty a charge on the interest of the successor: Re Higgins, 31 C. D. 142.

(*n*) But where two legacies, though given in respect of the same portion of the testator's property, are distinct and separate, the legatee of the one legacy is not a debtor to the crown in respect of the duty on the other, nor has the crown any lien on the subject of the one legacy in respect of duty on the subject of the other: Atty.-Gen. *v.* Giles, 5 H. & N. 255.

[*1412]

estate of such person so dying, or out of any personal estate which such person shall have power to dispose of as he or she shall think fit (*o*), shall be deemed and taken to be a *legacy within the intent and meaning of this Act, whether the same shall be given by way of annuity or in any other form, and whether the same shall be charged only on such personal estate, or charged also on real estate of the testator or testatrix who shall give the same; except so far as the same shall be paid or satisfied out of such real estate, in a due execution of the Will or testamentary instrument by which the same shall be given; and every gift which shall have effect as a donation *mortis causa*, shall also be deemed a legacy within the intent and meaning of this Act."

The value of annuities, and the duty, to be calculated according to the annexed tables, and the duty paid by installments, &c.

Sect. 8. "That the value of any legacy given by way of annuity (*p*), whether payable annually or otherwise, for any life or lives, or for years determinable on any life or lives, or for years or other period of time, shall be calculated, and the duty chargeable thereon shall be charged, according to the tables in the schedule hereunto annexed (*q*): And the duty chargeable on such annuity shall be paid by four equal payments, the first of which payments of duty shall be made before or on completing the payment of the first year's annuity, and the three others of such payments of duty shall be made in like manner successively, before or on completing the respective payments of the three succeeding years' annuity respectively; and the value of any such annuity, if determinable upon any contingency besides the death of any person or persons, shall be calculated without regard to such contingency: provided always, That if any such annuity *shall determine by the death of any person, before four years' payment of such annuity shall become due and payable, then and in such case the duty shall be payable in proportion only to so many of the payments of the said annuity as actually accrued and became due and payable; and in case any such annuity shall at

36 Geo. 3, c. 52.

(*o*) See Re Cholmondeley, 1 C. & M. 149, *post*, p. *1482. Platt *v.* Routh, 6 M. & W. 756, *post*, p. *1482, and stat. 8 & 9 Vict. c. 76, s. 4, *post*, p. *1482, n. (*p*).

(*p*) See Crow *v.* Robinson, 31 L. J. (N. S.) Ch. 516, as to what are annuities within this section.

(*q*) In the Atty.-Gen. *v.* Wynford, 9 Exch. 746, a question arose on the construction of a will, whether a legatee took an annuity for his own life only, or for the joint lives of himself and his wife, which was material, inasmuch as, by these tables, a larger amount of duty was payable in the former case. New tables are given in lieu of these, by the 31st section of the act (16 & 17 Vict. c. 51), *post*, p. *1465. But it has been held that the new tables apply only to legacies given after the 19th May, 1853 (when the act came in force): Re Earl Cornwallis, 11 Exch. 580.

any time determine upon any other contingency than the death of any person or persons, then and in such case, not only all payments of duty which would otherwise become due after the happening of such contingency, if any such would become due, shall cease; but it shall be lawful for the person or persons who shall have paid any duties which shall have previously become due, to apply for and obtain a return of so much of the duty so paid as will reduce the same to the like duty as would have been payable by such person or persons for such annuity, calculated according to the term for which the same shall have endured, which abatement the said commissioners for management of the stamp duties shall settle and determine according to the tables in the schedule hereunto annexed, and shall cause the amount of such abatement to be paid to the person or persons entitled to the same, out of any moneys in their hands arising from the duties imposed by this Act."

The value of annuities payable out of legacies, and the duty, to be calculated according to the annexed tables, and the duty to be charged on the value of such legacies after deducting such annuities, &c.

Sect. 9. "That the value of any legacy given by way of annuity for any life or lives, or for years determinable on any life or lives, or for years or for other period of time, and charged on and made payable out of any other legacy or legacies, shall be calculated, and the duty shall be charged thereon, in the same manner as hereinbefore directed with respect to other annuities; and the duty on the legacy charged with such annuity, if any duty shall be payable for such legacy, shall be calculated on the value of such legacy, after deducting the value of such annuity; and the duty for such annuity shall be paid by the person or persons entitled to the legacy or legacies charged with such annuity, by four equal payments, in the same manner as the same would be payable according to the provisions hereinbefore *contained, if such annuity had been a direct gift to the annuitant, and subject to the like proviso in case such annuity shall determine before four years' payment shall become due; and the payment which shall be made for such duty shall be retained by the person or persons paying the same, out of the first four years' payment of such annuity, if so many shall become due, or out of so many of such payments as shall become due by equal portions."

36 Geo. 3, c. 52.

Duty on legacies given to purchase annuities to be calculated on the sums necessary to purchase them.

Sect. 10. "That the duty payable upon any legacy given by direction to purchase with any personal estate of the testator or testatrix, or any part thereof, an annuity of a certain amount for the life or lives of any person or persons, or any other term, shall be calculated upon the sum necessary to purchase such annuity according to the tables before men-

[*1415]

tioned, and shall be deducted from such sum, and paid as in the case of other pecuniary legacies; and the person or persons paying or satisfying such legacy, and the person or persons for whose benefit the same shall be paid or satisfied shall be discharged, by payment of such duty so calculated as aforesaid, from all other demands in respect of the duty payable on such legacy; and the annuity to be purchased for the benefit of the person or persons entitled to the benefit of such legacy shall be reduced in proportion to the amount of the duty payable thereon as aforesaid, such reduction to be calculated in the same manner as the duty so payable as hereinbefore directed to be calculated; and the purchase of such reduced annuity, together with the payment of such duty, shall satisfy and discharge such legacy as fully as if an annuity had been purchased equal in amount to the annuity so directed to be purchased."

Duty on legacies whose value can only be ascertained by application of the allotted fund to be charged on the money as applied (r).

Sect. 11. "If any benefit shall be given by any Will or testamentary instrument, in such terms that the amount or value of such benefit can only be ascertained from time to time, by the actual application for that purpose of the fund *allotted for such purpose, or made chargeable therewith; or if the amount or value of any benefit given by any Will or testamentary instrument, cannot, by reason of the form and manner of the gift, be so ascertained that the duty can be charged thereon under any other of the directions herein contained; then and in every such case such duty shall be charged upon the several sums of money or effects which shall be applied from time to time for the purposes directed by such Will or testamentary instrument, as separate and distinct legacies or bequests, and shall be paid out of the fund applicable for such purposes or charged with answering the same."

36 Geo. 3, c. 52.

How duty on legacies enjoyed by persons in succession, or having partial interests therein, shall be charged:

Sect. 12. "The duty payable on a legacy or residue, or part of residue, of any personal estate given to or for the benefit of, or so that the same shall be enjoyed by different persons in succession, who shall be chargeable with the duties hereby imposed at one and the same rate, shall be charged upon and paid out of the legacy or residue, or part of residue, so given, as in the case of a legacy to one person; and where any legacy or residue, or part of residue, shall be given to or for the benefit of, or so that the same shall be enjoyed by

(r) See Re Wilkinson, 1 Cr. M. & R. 142, *post*, p. *1493. Atty.-Gen. v. Fitzgerald, 13 Sim. 83, *post*, p. *1494.

different persons in succession, some or one of whom shall be chargeable with no duty, or some of whom shall be chargeable with different rates of duty, so that one rate of duty cannot be immediately charged thereon, all persons who, under or in consequence of any such bequest, shall be entitled for life only, or any other temporary interest, shall be chargeable with the duty in respect of such bequest, in the same manner as if the annual produce thereof had been given by way of annuity; and such persons respectively shall be so chargeable with such duty, and the same shall be payable when they shall respectively become entitled to and begin to receive such produce, and shall be paid by equal portions during the aforesaid term of four years, if they shall so long continue to receive such produce; and where any other partial interest shall be given, or shall arise out of such property so to be enjoyed in *succession, the duty on such partial interest shall be charged and paid in the same manner as the duty is hereinbefore directed to be charged and paid in like cases of partial interests, charged on any property given, otherwise than to different persons in succession; and all and every person and persons who shall become absolutely entitled to any such legacy or residue, or part of residue, so to be enjoyed in succession, shall, when and as such person or persons respectively shall receive the same, or begin to enjoy the benefit thereof (*s*), be chargeable with and pay the duty for the same, or such part thereof as shall be so received, or of which the benefit shall be so enjoyed, in the same manner as if the same had come to such person or persons immediately on the death of the person by whom such property shall have been given to be enjoyed, or in such manner that the same shall be enjoyed in succession" (*t*).

36 Geo. 3, c. 52.

Sect. 13. "That the duty payable on any legacy or residue, or

(*s*) The legacy duty in such cases may now be commuted for a single payment under sect. 11 of 43 Vict. c. 14, and sect. 43 of 44 & 45 Vict. c. 12, which see, *post*, p. *1436 (*f*).

(*t*) See Atty.-Gen. *v.* Giles, 5 H. & N. 255. A testator bequeathed his residuary estate to his daughter for life, after which to her husband: On the testator's death 1*l.* per cent. duty was paid on her life interest, according to this section; afterward her husband, having bequeathed his personal estate to her, predeceased her: His executors disclaimed the bequest to him in the original will, and contended, consequently, that the residue of his wife's father's estate passed, as undisposed of, to her as his sole next of kin, and was chargeable, therefore, with only 1*l.* per cent. duty, and not 10*l.* per cent. (the rate payable by the husband): But it was held that the disclaimer was inoperative as to the duty: Atty.-Gen. *v.* Munby, 3 H. & N. 826.

[*1417]

part of residue, so given to or so to be enjoyed by different persons in succession, upon whom the duty shall be chargeable at one and the same rate, shall be deducted and paid by the person or persons having or taking the burthen of the execution of the Will or testamentary instrument under which the title thereto shall arise, upon payment or other satisfaction or discharge of every or any part of such legacy or residue, or part of residue, to any *trustee or trustees, or other person or persons to whom the same shall be payable, or paid in trust or for the benefit of the persons so entitled thereto in succession; and if the same shall not be so paid or satisfied to any such trustee or trustees, then such duty shall be deducted and paid out of the capital of the property so given, upon receipt, by any of the persons so entitled in succession, of any produce of such capital, or any part thereof, according to the amount of the capital of which such produce shall be so received; and where the duty chargeable upon any such bequest for the benefit of or to be enjoyed by different persons in succession shall be chargeable at different rates, so that the same cannot be paid at one and the same time, but must be paid in succession as aforesaid, then and in such case, all and every the person and persons having or taking the burthen of the execution of the Will or testamentary instrument in which such bequest shall be contained, shall be chargeable with such duties in succession, in the same manner as such persons would be chargeable with the like duties in case of immediate bequest; unless the property bequeathed shall have been paid or otherwise satisfied to or vested in any trustees or trustee as aforesaid, in which case such trustees or trustee, or his, her, or their representatives, shall be chargeable with the duties for and in respect of such property so vested in him, her, or them respectively, in such and the same manner as if he, she, or they had had or taken the burthen of the execution of the Will or testamentary instrument, by which such bequest shall have been made; and in like manner, where any partial interest shall be given, or shall arise out of any such property so to be enjoyed in succession, and such partial interest shall be satisfied or paid by the person or persons so enjoying such property, such person or persons shall be chargeable with the duties for and in respect of such partial interest, and shall retain and pay the same accordingly, in such and the same manner as if he, she, or they had had taken the burthen of the execution of the Will or testamentary instrument, by which *such partial interest shall have been created; and in all such cases, the person or persons so chargeable with duty shall be debtors to

and by whom payable.

36 Geo. 3, c. 52.

[*1418] [*1419]

the King's majesty, his heirs and successors, in like manner, and shall be subject to the like penalties as the person or persons having or taking the burthen of the execution of such Will or testamentary instrument are hereby made chargeable and subject to."

36 Geo. 3, c. 52.

Sect. 14. "Provided always, That no duty shall be paid on any articles of plate, furniture, or other things, not yielding any income, and given to or for the benefit of, or so as that the same be enjoyed by, different persons in succession, whilst the same shall be so enjoyed in kind only by any person or persons not having any power of selling or disposing thereof, so as to convert the same into money or other property yielding an income; but if the same shall be actually sold or disposed of, or shall come to any person or persons having power to sell or dispose thereof, or having an absolute interest therein, then, and in each and every such case, the same duty shall be chargeable and paid thereon as if the same had been originally given absolutely, and with full power to sell or dispose thereof, and shall be chargeable upon and paid by the person or persons for whose benefit the same shall be sold, or who shall have power to sell or dispose thereof, or an absolute interest therein, and shall become the debt of such person or persons; but shall not be a charge on any person or persons by reason of his, her, or their having assented to such bequest, as the person or persons having or taking the burthen of the execution of the Will or testamentary instrument by which such bequest shall have been made."

Plate, &c., while enjoyed in kind, not liable to duty till in possession of persons having power to dispose thereof.

Sect. 15. "Provided always, That where any legacy or any residue, or part of residue, shall be so given by any Will or testamentary instrument, that different persons shall become entitled thereto in succession, the duty shall be charged thereon as given to be enjoyed in succession, whether the person or persons entitled thereto shall take the same under or by virtue of such Will or testamentary instrument, *and the dispositions therein contained, or in default of such dispositions, and as entitled by intestacy.

Duty on legacies enjoyed in succession to be charged as such, whether taken under Wills or by intestacy.

36 Geo. 3, c. 52.

Sect. 16. "Where any legacy or residue, or part of residue, shall be given to or for the benefit of any person or persons in joint tenancy, some or one of whom shall be chargeable with any duty hereby imposed, and some or one of whom shall not be so chargeable, the person or persons chargeable with duty shall pay such duty in proportion to the interest

Duty on legacies in joint tenancy to be paid in proportion to the interests of the parties.

of such person or persons respectively in such bequest; and if any person or persons chargeable with duty, and entitled in joint tenancy as aforesaid, shall become entitled by survivorship, or by severance of the joint tenancy, to any larger interest in the property bequeathed, than that in respect of which such duty shall have been paid, then and in such case all and every such person or persons so becoming entitled by survivorship, or by severance, shall be charged with the same duty as if the property to which such joint tenant or joint tenants shall so become entitled had been originally given to or for the benefit of such person or persons only."

Duty on legacies subject to contingencies, to be charged as for absolute bequests, &c.,

Sect. 17. "When any legacy or any residue, or part of residue, shall be given, subject to any contingency which may defeat such gift, and whereupon the same may go to some other person or persons, such bequest (unless chargeable as an annuity under the provisions herein contained) shall be charged with duty as an absolute bequest, to the person or persons who shall take the same subject to such contingency, and such duty shall be paid out of the capital of such legacy or residue, or part of residue, notwithstanding the same may, upon such contingency, go to some person not chargeable with the same duty, or with any duty; and if such contingency shall afterward happen, and the property so bequeathed shall thereupon go in such manner that the same, if taken immediately after the death of the testator or testatrix, under the same title would have been chargeable with a higher rate of duty than the duty so paid, the person or persons becoming entitled thereto, shall be charged with and *shall pay the difference between the duty so paid, and such higher rate of duty."

36 Geo. 3, c. 52.

How duty on legacies subject to power of appointment shall be charged (u);

Sect. 18. "Where any legacy, or the residue, or any part of the residue, of any personal estate, shall be subjected to any power of appointment to or for the benefit of any person or persons specially named or described as objects of such power, such property shall be charged with duty as property given to different persons in succession; and in so charging such duty, not only the person and persons who shall take previous or subject to such power of appointment, but also any person and persons who shall take under or in default of any such appointment, when and as they shall so take respectively, shall, in respect of their several interests, whether previous, or subject to, or under, or in default of such appointment, be charged with the same duty, and in

(u) See Platt v. Routh, 6 M. & W. 765, *post*, p. *1482. Atty.-Gen. v. Brackenbury, 1 H. & C. 782, *post*. *1484.

[*1421]

the same manner, as if the same interests had been given to him, her, or them respectively, in and by the Will or testamentary disposition containing such power, in the same order and course of succession as shall take place under and by virtue of such power of appointment, or in default of execution thereof, as the case may happen to be; and where any property shall be given for any limited interest, and a general and absolute power of appointment shall also be given to any person or persons to whom the property would not belong in default of such appointment, such property, upon the execution of such power, shall be charged with the same duty, and in the same manner, as if the same property had been immediately given to the person or persons having and executing such power, after allowing any duty before paid in respect thereof (*x*), and where any property shall be given with any such general power of appointment, which property in default of appointment will belong to the person or persons *to whom such power shall also be given, such property shall be charged with, and shall pay the duty by this Act imposed, in the same manner as if such property had been given to such person or persons absolutely in the first instance, without such power of appointment."

36 Geo. 3, c. 52.

Sect. 19. "Any sum of money or personal estate, directed to be applied in the purchase of real estate, shall be charged with and pay duty as personal estate; unless the same shall be so given as to be enjoyed by different persons in succession, and then each person entitled thereto in succession shall pay duty for the same in the same manner as if the same had not been directed to be applied in the purchase of real estate unless the same shall have been actually applied in the purchase of real estate before such duty accrued: but no duty shall accrue in respect thereof, after the same shall have been actually applied in the purchase of real estate, for so much thereof as shall have been so applied: Provided nevertheless, That in case before the same or some part thereof shall be actually so applied, any person or persons shall become entitled to an estate of inheritance in possession in the real estate, to be purchased therewith, or with so much thereof as shall not have been applied in the purchase of real estate, the same duty which ought to be paid by such person or persons, if absolutely entitled thereto as personal estate by virtue of any bequest thereof as such,

and how on personal estates directed to be applied in purchase of real estates.

(*x*) The payment of this duty by the person executing such power does not satisfy the duty payable under the Succession Duty Act by the person who succeeds by virtue of the appointment. Atty.-Gen. *v.* Mitchell, 6 Q. B. D. 548.

[*1422]

shall be charged on such person or persons, and raised and paid out of the fund remaining to be applied in such purchase" (*y*).

Estates *pur autre vie* applicable as personal estates, to be charged as such.

Sect. 20. "That estates *pur autre vie*, applicable by law in the same manner as personal estate, shall be charged with the duties hereby imposed as personal estates" (*z*).

36 Geo. 3, c. 52.

Money left to pay duty not chargeable as a legacy (*a*).

*Sect. 21. "Provided always, That if any direction shall be given, by any Will or testamentary instrument, for payment of the duty chargeable upon any legacy or bequest out of some other fund, so that such legacy or bequest may pass to the person or persons to whom or for whose benefit the same shall be given, free of duty, no duty shall be chargeable upon the money to be applied for the payment of such duty, notwithstanding the same may be deemed a legacy, to or for the benefit of the person or persons who would otherwise pay such duty."

Mode of ascertaining duty on property not reduced into money.

Sect. 22. "In cases of specific legacies, and where the residue of any personal estate shall consist of property which shall not be reduced into money (*b*), it shall be lawful for the person or persons having or taking the burthen of the administration of such effects, or the person or persons by whom the duty thereon ought to be paid, to set a value thereon, and offer to

(*y*) De Lancey *v.* The Queen, L. R. 6 Exch. 286, affirmed in Cam. Scacc. L. R. 7 Exch. 140.

(*z*) See Chatfield *v.* Berchtoldt, L. R. 7 Ch. 192, in which case a testator gave a rent-charge, to issue out of lands in England, to A. for life, and directed that after her death it should be continued, and equally divided between B., C. and D. during their lives and the life of the longest liver. B. died domiciled abroad, leaving an English will, by which she disposed of her personal estate. On the death of A., who was survived by C. and D., the crown claimed from B.'s executors legacy duty in respect of B.'s third share of the rent-charge: and it was held that such duty was payable, for that the interest in the rent-charge which passed to B.'s executors was, by the Wills Act, "an estate *pur autre vie*, applicable by law in the same manner as personal estate," and therefore fell within 36 Geo. 3, c. 52, s. 20, and that it was not exempt from duty by reason of B.'s foreign domicile, inasmuch as, although it was by law applicable in the same manner as personal estate it was not by any of the statutes made personal estate, but was realty not following the person.

(*a*) As to what terms in a will shall entitle a legatee to receive his legacy free of duty, see the cases collected *infra*, p. *1506 *et seq.*

(*b*) The provisions of this section apply to property which shall not be reduced into money during the course of the administration by the executor, and not merely to property which shall not have been reduced into money when the residuary account is brought in. Atty.-Gen. *v.* Dardier, 11 Q. B. D. 16.

pay the duty according to such value ; or to require the commissioners for management of the stamp duties, to appoint a person to set such value, at the expense of the person or persons by whom such duty ought to be paid ; and it shall be lawful for the commissioners to accept the duty offered to be paid, upon the value set by the person or *persons having or taking the administration of such effects, or by whom the duty for the same shall be payable without such appraisement, if the said commissioners shall think fit so to do ; but if the said commissioners shall not be satisfied with the value so set, on which the duty shall be so offered, it shall be lawful for the said commissioners, notwithstanding such offer, to appoint a person to appraise such effects, and to set the value thereon, on which value so set the said commissioners shall assess the duty payable in respect thereof, and require the same to be paid ; but if the person or persons by whom such duty shall be payable, shall not be satisfied with the valuation made under the authority of the said commissioners, and pay the duty accordingly, it shall be lawful for such person or persons to cause the valuation so made under the authority of the said commissioners, to be reviewed by the commissioners of the land tax for the time being, of the district or place where such effects shall be, at their next meeting, after the said commissioners for management of the stamp duties shall have assessed and required payment of such duty as aforesaid, if fourteen days shall have elapsed between such time and the meeting of the said commissioners of land tax, and if not, then at the next succeeding meeting of the said commissioners, of which appeal six days' notice shall be given to the said commissioners of stamp duties ; and the said commissioners of the land tax shall and may (if they think fit) appoint a person to appraise such effects, and set a value thereon, and shall and may hear and determine such appeal, in the same manner as in any other cases of appeal to them, and with the like authorities, and their judgment shall be final ; and if the valuation made under the authority of the said commissioners of the stamp duties in the case last mentioned, shall not be duly appealed from within the time aforesaid, or shall be affirmed upon appeal, the duty shall be paid according to such valuation ; and if any variation shall be made on such appeal, the duty shall be paid according to such variation ; and if the duty assessed in manner aforesaid shall exceed the *duty offered to and refused by the said commissioners of stamp duties, the expense of such appraisement and other proceedings in assessing such duties, shall be borne by the person or persons by whom such duty shall be payable ; and if any

36 Geo. 3, c. 52.

36 Geo. 3, c. 52.

[*1424] [*1425]

dispute shall arise between any person or persons entitled to any such legacy or residue, or part of residue, and any person or persons having or taking the burthen of the administration of such effects, with respect to the value thereof, or with respect to the duty to be paid thereon, the duty shall be assessed by the said commissioners of stamp duties on reference to them by either party for that purpose ; and if the value of any property on which such duty ought to be paid shall be in dispute, the said commissioners of the stamp duties shall cause an appraisement to be made thereof at the expense of the person or persons by whom such duty ought to be paid, in the manner hereinbefore directed in other cases, and assess the duty thereon accordingly ; and if such person or persons by whom such duty ought to be paid, shall be dissatisfied with such valuation, or with the assessment of duty made upon such valuation, by the said commissioners of the stamp duties, the same shall be reviewed and finally determined by the said commissioners of the land tax, upon appeal to them within the time, and under the restrictions, and in the manner hereinbefore directed in other cases ; but if such valuation or assessment shall not be duly appealed from within the time limited for that purpose, or shall be affirmed upon appeal, the duty shall be paid according thereto ; and if any variation shall be made therein on such appeal the duty shall be paid according to such variation ; and in case the effects whereon any such duty shall be payable shall be at the distance of ten miles from London, then and in such case it shall be lawful to make the like application to such person as shall be deputed for that purpose by the said commissioners to act in their stead, in such cases, within the county or district in which such effects shall be ; and such person so deputed shall act in such cases, in all respects, in the same manner as the said commissioners *are hereby authorized to act, subject nevertheless to the instructions and control of the said commissioners."

36 Geo. 3, c. 52.

Sect 23. " Where any legacy, or part of any legacy, or residue, or part of residue, whereon any duty shall be chargeable by this Act, shall be satisfied otherwise than by payment of money or application of specific effects for that purpose, or shall be released for consideration or compounded for less than the amount of value thereof, then and in such case the duty shall be charged and paid in respect of such legacy, or part of legacy, or residue, or part of residue, according to the amount or value of the property taken in satisfaction thereof, or as the consideration for release thereof or composition for the same: Provided

Duty on legacies not satisfied in money, etc., to be paid according to the value of the satisfaction.

[*1426]

always, That if any legacy, or bequest, shall be made in satisfaction of any other legacy, or bequest, or title to any residue, or part of residue, of any personal estate remaining unpaid, the duty shall not be paid on both subjects, although both may be chargeable with duty, but shall be paid on the subject yielding the largest duty."

If legatees refuse to accept legacies, duty deducted, the Court, in case of suit, may order them to pay costs:

Sect. 24. "If any person or persons having or taking the burthen of the execution of the Will or other testamentary instrument, or the administration of the personal estate of any person deceased, or any person or persons hereby made chargeable with duty, shall declare himself, herself, or themselves ready and willing, and shall accordingly offer to pay any pecuniary legacy, or residue, or part of residue, deducting the duty payable thereon, or shall in like manner offer to deliver or otherwise dispose of any specific legacy, or any specific property, part of any residue of any personal estate, to or for the benefit of the person or persons entitled thereto, or to any trustee or trustees for such person or persons, upon payment of the duty payable in respect thereof, and the person or persons entitled to such legacy or residue, or part of residue, or the trustee or trustees for such person or persons, shall refuse to accept such offer and to give a proper release and discharge for such legacy or residue, or so much thereof as shall be offered to be paid, delivered, or otherwise *disposed of as aforesaid, then and in such case, although no actual tender shall be made, if any suit shall be afterward instituted for such legacy or effects, respecting which such offer shall have been made, it shall be lawful for the Court in which such suit shall be instituted, to order all costs, charges, and expenses attending the same, to be paid by the person or persons who shall have refused to accept such offer, and to give or join in such release or discharge, or to order such costs, charges, and expenses, to be deducted and retained out of such legacy or effects, together with the duty payable thereon, as the said Court shall see fit; and in case any suit shall be instituted for payment of any legacy or residue, or part of residue, of any personal estate, and the person or persons sued for the same shall be desirous of staying proceedings in such suit, on payment of the money due, or delivering or otherwise disposing of the specific effects demanded, after deducting or receiving the duty payable thereon, it shall be lawful for the Court in which such suit shall be instituted if it shall see fit, on application in a summary way, to make such order for payment of such legacy or residue, or part of

36 Geo. 3, c. 52.

and in suits where the party sued may wish to stop proceedings on payment of bequests, deducting duty, the Court may make order therein.

[*1427]

residue, or for delivering or otherwise disposing of such effects, and for payment of the duty payable thereon, and all such costs, charges, and expenses, attending such suit, as shall be just."

If suit be instituted concerning administration, the Court to provide for payment of the duty (c).

Sect. 25. "If any suit shall be instituted concerning the administration of the personal estate of any person dying testate, or intestate, or any part of such estate in which any direction shall be given touching the payment of any legacies or legacy of such person, or the residue of his or her personal estate, or any part thereof, the Court wherein such suit shall be instituted shall, in giving directions concerning the same, *provide for the due payment of the duties hereby imposed; and in taking any account of any personal estate, or otherwise acting concerning the same, such Court shall take care that no allowance shall be made in respect of any legacy, or part of legacy, or of any residue, or part of residue, in any manner whatsoever, without due proof of the payment of the duties hereby imposed."

36 Geo. 3, c. 52.

Executors may discharge legacies on payment of the duty accrued.

Sect. 26. "Provided always, That any person or persons having or taking the burthen of the execution of any Will or other testamentary instrument, or the administration of the personal estate of any person deceased, may from time to time pay, deliver, or otherwise dispose of any legacy, or any part of any legacy, or make distribution of any part of the residue of any personal estate, on payment, from time to time, of such proportions of the duty hereby imposed, as shall accrue in respect of such part of such personal estate as shall be so administered."

No legacy liable to duty, to be paid without a receipt containing certain particulars;

Sect. 27. "No person or persons having or taking the burthen of the execution of any Will or testamentary instrument, or the administration of the personal estate of any person deceased, nor any trustee or trustees, or other person or persons hereby directed and required to account for any duty, shall, from and after the passing of this Act, pay, deliver, or otherwise dispose of, or in any manner satisfy, discharge, or compound for any legacy whatsoever, or any part thereof, or the residue of any personal estate, or any part thereof, in respect

(c) See Foster *v.* Ley, 2 Bing. N. S. 1402, *post*, p. *1510. R. Sammon, 3 M. & W. 381, as to the pendency of a suit not relieving executor from the necessity of delivering an account. See also Hicks *v.* Keat, 3 Beav. 141. As to the obligation on solicitors not to let the court make an order paying away a legacy without providing for the duty, see Bryan *v.* Mansion, 3 Jur. N. S. 475, *per* Lord Cranworth.

whereof any duty is hereby imposed, without taking a receipt or discharge in writing for the same, expressing the date of such receipt or discharge, and the names of the testator, testatrix, or intestate, under whose Will or testamentary disposition, or upon whose intestacy the title to such legacy or part of legacy, or to such residue or part of residue, shall accrue, and of the person or persons to whom such receipt or discharge shall be given, and of the person or persons to whom such legacy, or residue or part of residue, shall have been given, or shall have belonged in consequence of intestacy, and the amount or value of the *legacy, or part of legacy, or residue, or part of residue for which such receipt or discharge shall be given, and also the amount and rate of the duty payable and allowed thereon; and that no written receipt or discharge for any legacy or part of any legacy, or for the residue of any personal estate, or any part of such residue, in respect whereof any duty is hereby imposed, shall be received in evidence, or be available in any manner whatever, unless the same shall be stamped, as required by this Act; and no evidence whatsoever shall be given of any payment, satisfaction, or discharge whatsoever, or of any release or composition of such legacy, or any part thereof, or of such residue, or any part thereof, without producing such receipt or discharge, duly stamped as aforesaid, unless the actual payment of the duty hereby imposed shall first be given in evidence: Provided always, That a copy of the entry, in the books of the commissioners of the stamps, of the payment of such duty, shall be admitted as evidence thereof: Provided also That payment of any annuity shall not be deemed a payment for which such stamped receipt shall be required, under the directions of this Act, except the several payments which shall complete the payments for each of the first four years, during which such annuity shall be payable; and in like manner any payment in respect of any legacy or bequest, hereby directed to be charged with the duty in the same manner as annuities are hereby made chargeable with duty, shall not be deemed a payment for which such stamped receipt shall be required, except the several payments which shall complete the payments for each of the first four years in respect of which such legacy or bequest shall be chargeable with duty as an annuity."

36 Geo. 3, c. 52.

no receipt available unless duly stamped, &c.

Copy of entry at stamp office of payment of duty, evidence.

Stamped receipts for annuities not required but on completing payments for each of the first four years.

Sect. 28. "That any person having or taking the burthen of the execution of any Will or testamentary instrument, or the administration of the personal estate of any person deceased, and any trustee

[*1429]

or trustees, or other person or persons hereby directed and required to account for any duty, who shall pay, deliver, or otherwise dispose of, or in *any manner satisfy or discharge, or compound for any legacy given by such Will or testamentary instrument, or the residue, or any part of the residue, of such personal estate, to or for the benefit of any person or persons entitled to such legacy or any part thereof, or to such residue, or any part thereof, without taking such receipt or discharge in writing as aforesaid, and causing the same to be stamped within the time hereby allowed for stamping the same, shall forfeit and lose the sum of ten pounds *per centum* on the sum of money, or the value of the property if not money, for which such receipt or discharge ought to have been given in pursuance of this Act: and all and every person and persons receiving or taking the benefit of any such money or other property without giving a written receipt or discharge for the same, in which the duty payable in respect thereof shall be expressed to have been allowed or paid to the person or persons to whom such receipt or discharge shall be given, and which shall bear date on the day of signing the same, shall forfeit and lose the sum of ten pounds *per centum* on the sum of money, or on the value of the property, so received or taken."

Penalty of 10*l.* per cent. for paying or receiving legacies without stamped receipts.

36 Geo. 3, c. 52.

Sect. 29. "Every such receipt or discharge shall be brought within the space of twenty-one days after the date thereof to the said head office of the said commissioners, or to some other office to be appointed by the said commissioners for such purpose, to be stamped, paying the duty for the same, and upon such payment either at the said head office, or at any other office to be appointed as aforesaid, the receiver-general or other proper officer to be appointed for that purpose by the said commissioners, as the case shall require, shall write upon such receipt or discharge an acknowledgment of the payment of the duty so paid in words at length, and bearing date the day on which such payment shall be made, and shall subscribe his name thereto, and enter an account thereof in a book or books to be provided for that purpose, to the intent that he may be thereby charged with the sum so paid; and in case the *duty shall be so paid at the said head office, then the receipt or discharge so brought to be stamped, shall be forthwith stamped with one of the said four stamps as the case shall require; and in case the duty shall be so paid at any other office to be appointed by the said commissioners as aforesaid, the receipt or discharge whereon such

Receipts to be stamped within twenty-one days after date, on which an acknowledgment of payment of the duty shall be written, &c.

36 Geo. 3, c. 52.

[*1430] [*1431]

acknowledgment of the payment of duty shall be so written and subscribed, shall be transmitted within the space of twenty-one days from the day of payment of such duty to the said head office to be stamped, and the same shall be stamped accordingly with one of the said four stamps as the case shall require; and in case the person or persons paying such duty at any such office to be appointed as aforesaid, shall be desirous that the same should be transmitted to the said head office, by the officer to whom such duty shall be paid, and shall leave the same with such officer for such purpose, such officer shall thereupon sign and deliver an acknowledgment, that such receipt or discharge has been left with him for such purpose, and shall transmit such receipt or discharge to such head office to be stamped as aforesaid, and the same shall be sent again to such officer as soon as conveniently may be after the stamping thereof; and such officer shall deliver back the same to the person or persons entitled thereto, upon re-delivery to him of the acknowledgment which he shall have given for the same: Provided always, That if any such receipt or discharge shall not be so brought to any such office as aforesaid, within such space of twenty-one days as aforesaid, it shall nevertheless be lawful to carry such receipt or discharge to the said head office to be stamped in like manner, within three calendar months after the date thereof, paying the duty for the same, and also the further sum of ten pounds *per centum* on such duty by way of penalty for not having before paid such duty, on payment of which duty and penalty, the said commissioners are hereby authorized and required to stamp such receipt or discharge, in the same manner as if the same had been brought to the said office *within the space of twenty-one days from the date thereof; but the said commissioners, or any of their officers, shall not on any pretense whatever, except as hereinafter directed, stamp any vellum, parchment or paper, upon which any receipt, or discharge for any legacy or part of legacy, or any residue of any personal estate, or any part thereof, shall be written or signed with the said new stamps, or any of them, unless the duty for the same shall be paid, and such receipt or discharge shall be produced to be so stamped in manner aforesaid, within the times and in the manner hereinbefore respectively limited and appointed" (*d*).

Receipts may be stamped within three months after date, on payment of duty, and 10*l.* per cent. penalty;

36 Geo. 3, c. 52.

but none to be stamped unless the duty be paid and they are brought to be stamped within the limited time.

(*d*) But now by stat. 48 Geo. 3, c. 149, s. 44, "in all cases not provided for by the preceding clause, where any receipt or discharge given for any legacy, or for the residue, or any share of the residue, of any personal estate, which shall have been given by Will

48 Geo. 3, c. 149, s. 44.

Sect. 30. "If it shall appear to the satisfaction of the said commissioners of stamp duties, upon oath or affirmation to be administered by a justice of the peace, or master or masters extraordinary in Chancery, which oath or affirmation such person or persons are hereby empowered to administer, that less duty has been paid for any legacy, or residue, or part of residue, than ought to have been paid for the same, by mistake, without any intention to defraud; and if application shall be made to the said commissioners to rectify such *mistake, and accept the duty really due before any suit shall be instituted concerning the same, and within three calendar months after payment of the money actually paid instead of the just duty, it shall be lawful for the said commissioners to accept the difference between the money paid and the just duty, together with the sum of ten pounds *per centum* on such difference by way of penalty in full for the just duty, and which shall be in discharge of all penalties incurred by non-payment of such duty, and to cause an acknowledgment of the payment of the just duty to be written on the receipt or discharge given for such legacy or residue or part of residue, and to be subscribed by the proper officer, and also to cause such receipt or discharge to be properly stamped, if necessary, in the same manner as would have been done if the just duty had been originally paid."

Mistakes in paying duty may be rectified, if no suit be instituted, on payment of the difference within three months, and 10*l.* per cent.

36 Geo. 3, c. 52.

Sec. 31. "Provided always, and be it further enacted, That the party or parties paying or satisfying any legacy, or any residue of any personal estate, or any part of such residue, or receiving the same, contrary to the provisions of this Act, who shall, within the space of twelve calendar or other testamentary instrument, or have devolved to any person or persons upon intestacy, shall be brought to the head office, to be stamped after the expiration of three calendar months from the date thereof, it shall be lawful for the said commissioners to cause the same to be duly stamped, for making the same available, on payment of the duty, which shall be payable in respect thereof, together with the penalty incurred, in consequence of the same not having been brought to be stamped, before the expiration of such three calendar months; and where any such receipt or discharge shall have been signed out of Great Britain, if the same shall be brought to be stamped within twenty-one days after its being received in Great Britain it shall be lawful for the said commissioners to remit any penalty that may have been incurred thereon, and to cause the same to be duly stamped, on payment of the duty payable in respect thereof: anything contained in any former Act or Acts to the contrary notwithstanding."

Persons paying or receiving money contrary to this Act, indemnified on discovering the other offender:

Commissioners may stamp receipts for legacies, after three months from the date on payment of duty and penalty, and remit penalty (within twenty-one days) if signed out of Great Britain.

[*1433]

months after the offense committed, discover the other party or parties offending therein, so that such party or parties so discovered be thereupon convicted, such person so discovering shall be indemnified and discharged from all penalties incurred for any offense against this Act."

Sect. 32. There has already been occasion to state *verbatim* the earlier part of this section (*e*), by which it is provided that if by reason of the infancy, or absence beyond seas, of the legatees, legacies cannot be properly paid, the money may be paid into the Bank of England.

If by infancy or absence legacies cannot be paid, the money may be paid into the Bank.

The statute proceeds to provide, that if it shall afterward appear that such money has been improperly paid into the *Bank, the Court of Chancery, upon petition, in a summary way, may dispose thereof, in such manner as justice shall require: And if it shall appear that the duty paid in respect of any such sum of money was more than ought to have been paid, the person who shall have paid such duty may apply to the commissioners of stamps to repay such excess, and they may repay such excess; and if the duty paid appear to be less than the duty which ought to have been paid, the person who paid such money, upon payment of the full duty to the said commissioners, in such manner as the same ought to be paid, with such penalties, if any, as ought to be paid in respect thereof, may apply to the Court of Chancery, in a summary way, for the repayment of the further sum paid to the said commissioners for such duty, out of the money in the Bank so paid in by such person, which payment the said court is authorized to order.

Provisions in case such money be improperly paid in;

36 Geo. 3, c. 52.

provisions in case of payment of too much or too little duty.

Sect. 33. "If at the end of two years after the death of any person deceased, it shall appear to the satisfaction of the said Commissioners of stamp duties, that it will require time to collect the debts or effects of such person then outstanding, or that from circumstances it will be difficult to ascertain or adjust the amount of the clear residue of the personal estate of such person liable to duty, and the parties interested therein shall be desirous of compounding for the duty thereon, it shall be lawful for such parties respectively, with the consent of the Commissioners of stamp duties, to make application to the Court of Exchequer at Westminster, if the deceased person resided in England or elsewhere, except

If it shall appear to the commissioners for stamps, at the end of two years after the death of any person, that it will require time to collect the effects, or be difficult to ascertain the residue of the personal estate, the duty may be compounded for:

(*e*) See *ante*, p. *1263. The costs of paying the legacy into court must come out of the estate, those of obtaining payment out must be borne by the legatee. Re Cawthorne, 12 Beav. 56. Re Jones, 3 Drewr. 679. See also *post*, p. *1820.

in Scotland, and to the Court of Exchequer in Scotland, if the deceased resided in Scotland, for leave to compound such duty, stating upon oath the particulars of the personal estate for which such composition shall be proposed to be made, by affidavit to be filed in the said Court, and declaring at the same time upon oath, whether any other property of the deceased then outstanding, besides the property for which such composition shall be proposed to be *made, hath come to the knowledge of the said parties, or any of them, and the nature thereof, and the circumstances attending the same; and in such case it shall be lawful for the said Court of Exchequer in England or Scotland, as the case may be, to appoint a proper person to set a value on the personal estate, or such part thereof, for which no duty shall have been charged, and which shall be specified in such affidavit as the property for which such composition shall be desired, and to adjust and settle the duty, which justly and equitably, under all circumstances, ought to be paid in respect of such personal estate so specified, and thereupon it shall be lawful for the said commissioners, and they are hereby required, if the said Court of Exchequer to which such application shall be made, shall confirm the said adjustment and settlement, and order the duty to be accepted accordingly, and by authority of such order to accept payment of the sum so adjusted and settled, in full discharge of the duty on so much of such personal estate as shall be so specified, and according to such order, and to enter the same in their books accordingly, and to grant certificates thereof, expressing the receipt of such duty by way of composition under such order; and every such person to whom such certificate shall be granted, and every future representative of the same estate, and all persons entitled to the benefit of the property, for which such composition shall be so paid, shall be discharged from any further payment of duty on the same: and in all future payments of such property, it shall be lawful for the persons having or taking the burthen of the execution of any Will or testamentary instrument disposing such property, or the administration thereof, to pay, apply, and dispose of the same, and for all persons entitled to the benefit thereof to receive the same, without having the receipts and discharges in writing, hereby required to be given and taken for the same, stamped as hereinbefore directed: provided such receipts or discharges shall express the same to be given under the authority of such composition as aforesaid, and not liable to duty: Provided always nevertheless, That the duty shall *be charged and paid upon all and every part of the personal estate of such person deceased,

36 Geo. 3, c. 52.

duty to be paid on any

[*1435] [*1436]

other than that which shall be specified in such affidavit as aforesaid, and included in the valuation in which such composition shall have been made as aforesaid, and for which the said Court of Exchequer shall allow and order such composition to be taken as aforesaid in the same manner as if no such composition had been made: and all and every person and persons shall be liable to all the like penalties and forfeitures for not duly paying the duty for such personal estate not compounded for, and subject to the like rules, methods, and directions for charging such duty, as such person and persons respectively would be liable to if such composition had not been made" (*f*).

36 Geo. 3, c. 52.

part of personal estates not included in the composition.

*Sect. 34. "And be it further enacted, That if at any time after payment of duty on any legacy, or residue, or part of residue, of the personal estate of any person deceased,

36 Geo. 3, c. 52.

(*f*) By s. 11 of the Customs and Inland Revenue Act, 1880 (43 Vict. c. 14), it is provided that: "Where any legacy duty or succession duty shall be presumptively payable in respect of any interest in expectancy upon the determination of a life or other temporary interest in possession in a legacy or residue, or in personal property comprised in a succession, and the duty (if any) payable upon the life or other temporary interest shall have been fully paid and satisfied, it shall be lawful for the Commissioners of Inland Revenue, in their discretion, upon the application of the executor or trustee, or other person who would be accountable for the duty in respect of such interest in expectancy, if it were then in possession, to commute the duty presumptively payable for a certain sum to be presently paid. For assessing the amount which shall be so payable the Commissioners shall cause a present value to be set upon the presumptive duty, regard being had to any contingencies affecting the liability to such duty, and the interest of money involved in the calculation being reckoned at the rate for the time being allowed by the Commissioners in respect of duties paid in advance under the Succession Duty Act, 1853. Upon the receipt of the certain sum the Commissioners shall give a discharge for the duty accordingly." And by s. 43 of the Customs and Inland Revenue Act, 1881 (44 Vict. c. 12), it is provided that: "It shall be lawful for the Commissioners of Inland Revenue upon the application of the person acting in the execution of the Will of any deceased person, and upon the delivery to them of an account showing the amount of the estate and effects in respect whereof legacy duty is payable, together with the names or description of the class of the persons entitled thereto and every part thereof, in possession or expectancy, and their degrees of consanguinity to the testator, to assess the duty upon the amount shown by the said account at such a sum by way of composition as, having regard to the circumstances, shall appear to be proper, and to accept payment of the duty so assessed in full discharge of all claims for legacy duty under such Will. If the Commissioners are of opinion that an application should receive the assent of any person, they shall refuse to entertain the application until such assent shall have been given."

[*1437]

any debt shall be recovered against the estate of such deceased person, or any loss shall happen, by reason whereof, or for any other just cause, any legatee or other person, by whom any legacy or part of legacy, or any residue of any personal estate hath been received or retained, shall be obliged to refund the same, or any part thereof, then in every such case it shall be lawful for the said commissioners of stamp duties, and they are hereby required, on due proof made on oath as aforesaid, to their satisfaction, of the amount of such sums refunded, and that by reason thereof there hath been an over-payment of duty, to settle and adjust the amount of such over-payment, and to repay the same out of the money in their hands, arising from the duties by this Act imposed, or to allow the same in future payments as the case may permit or require" (*g*).

If any legacy be refunded, the duty to be repaid.

Sect 35. "Whenever any person or persons having or taking the burthen of the execution of any Will or testamentary instrument, or the administration of any personal estate as aforesaid, shall be entitled to any legacy, or the residue, or any part of the residue, of the personal estate of any testator, testatrix, or intestate, such person shall be chargeable with the duty whenever he, she, or they shall be entitled, in the due course of administration, to retain to his, her, or their own use, any part of the said estate, in satisfaction of such legacy, or residue, or any part thereof: and every such person, before any such retainer shall transmit *to the said commissioners of stamp duties or their officers, a note containing the particulars of such legacy, residue, or part of residue, intended to be retained, and the amount or value thereof, and the duty which such person or persons shall offer to pay thereon, and the said commissioners shall charge and assess the duty thereon, in such manner as the duty shall be chargeable thereon by virtue of the provisions in this Act contained, and such duty shall be paid accordingly; and on payment of the said duty, the said receiver-general of the said duty, or officer appointed to receive the same, shall, at the foot of a duplicate of the said assessment duly stamped, in such manner as the said commissioners shall direct for such purpose, give a receipt for such duty in such form of words as the said commissioners shall direct, which receipt shall be a discharge for the duty expressed therein: and

Executors previous to retaining their legacies to transmit the particulars with the duty offered, to the commissioners of stamps, who shall charge the same agreeable to this Act.

36 Geo. 3, c. 52.

(*g*) In case the commissioners decline to repay the duty, the proper remedy seems to be a petition of right under 23 Vict. c. 34.

[*1438]

in case any such person or persons shall neglect to pay such duty as aforesaid, within fourteen days after the same ought to have been paid as aforesaid, every such person or persons shall forfeit and pay treble the value of the duty which ought to have been paid."

Penalty for neglect of payment of duty for fourteen days.

Sect. 37. "If the authority under or by color of which any person shall have administered the estate or effects of any person deceased, or any part thereof, shall be void, or be repealed, or declared void, and such person shall before the avoidance, repeal, or declaration of avoidance, have paid any duty hereby imposed, or any duty imposed by any of the said former Acts, which shall not be allowed to such person out of the estate or effects of such deceased person, by reason that the same duty was not really due or payable, the money paid for such duty shall, on proof thereof to the satisfaction of the said commissioners of stamp duties, be repaid to the person or persons who shall have paid the same, or his, her, or their representatives, by the said commissioners, out of any moneys in their hands arising from the duties imposed by this Act, or the said former Acts: but in case such duty ought to have been paid by the rightful executor or executors, administrator or administrators, of *such deceased person, then and in such case, the payment of such duty shall be valid and effectual, notwithstanding such avoidance, repeal, or declaration of avoidance as aforesaid; and no such person shall, by reason of the avoidance, repeal, or declaration of avoidance of such authority, be sued, molested, or troubled for or in respect of such payment; but all such payments, in respect of the said duty, shall be allowed in account with such rightful executor or executors, administrator or administrators, and the same shall be deemed payments in the due course of administration, as fully and effectually as if such payments had been made by rightful executors or administrators: any law, usage, or custom, to the contrary notwithstanding" (*h*).

If administration be made void, and any duty shall have been improperly paid it shall be repaid, but if it ought to have been paid, it shall be allowed in account with the rightful executor.

36 Geo. 3, c. 52.

(*h*) By an instrument purporting to be the will of S. deceased, the whole of S.'s personalty, amounting in the net to 12,748*l.*, was bequeathed to I., a stranger in blood, who was executor: I. took out probate, and paid the duty of 10 per cent. on the whole net: Afterward T., the next of kin to S., disputed the will, on the ground that S. was not of disposing mind: I. paid 6,000*l.* to T., and consented that the will should be revoked, and administration taken out by T., who in consideration thereof, released to I. her claim on the 12,748*l.*: T., from her nearness of blood was liable to a duty of less than ten per cent.: It was held that, under the enactments of this section, I. was entitled to a return

By 31 & 32 Vict. c. 124, s. 9, it is provided, "that in any case in which duty payable in respect of any legacy or residue under the Legacy Duty Acts in force, or in respect of any succession under the Succession Duty Act, 1853, shall be in arrear, the person by whom the arrears of duty may be payable shall be liable to pay interest thereon at £4 per cent. per annum; and such interest shall be recoverable by the Commissioners of Inland Revenue in the same manner as the arrears of duty, and as part thereof; provided that the acceptance or recovery by the said Commissioners of arrears of duty, with interest thereon as aforesaid, shall be an abso*lute waiver of the penalties (if any) which may have been incurred under the Legacy or Succession Duty Acts."

Arrears of legacy duty or succession duty to be paid with interest.

The statute 44 Geo. III. c. 98, after reciting that the several duties therein mentioned are become very numerous, intricate and complicated, and it will naturally contribute to the public benefit to consolidate and simplify the same, enacts, "That from and after the 10th of October, 1804, all and singular the duties, &c. (aforesaid) shall cease and determine," and imposes the several duties contained in the schedule in lieu thereof.

44 Geo. 3, c. 98.

Legacies charged upon or payment out of the produce of real estate were not subject to the payment of duty until the 45 Geo. III. c. 28: By that statute duties are imposed "Upon all legacies specific or pecuniary, or of any other description, whether the same be charged upon or payable out of *any real* or personal *estate*, and upon all residues or shares of personal estate left by any Will or testamentary instrument, or divided by force of the Statute of Distributions, or the custom of any province or place, and upon moneys, or residues, or shares of moneys *arising from the sale of real estates*, by any Will or testamentary instrument directed to be sold." And by section 4, it is enacted, "That every gift by any Will or testamentary instrument of any person dying after the passing of this Act, which, by virtue of any such Will or testamentary instrument, shall have effect or be satisfied out

45 Geo. 3, c. 28.

Legacies, &c., out of real estate subject to duties (*i*).

What shall be deemed a legacy under this Act (*k*).

of duty, not only on the 6,000*l.*, but also on the remaining 6,748*l.*, and that the duty on the whole 12,748*l.* was to be accounted for between T. and the commissioners of stamps, as duty charged on T., at the lower rate: Reg. *v.* The Commissioners of Stamps, 6 Q. B. 657.

(*i*) See also stat. 8 & 9 Vict. c. 76, s. 4, *post*, pp. *1442, *1443.

(*k*) This definition was extended by stat. 8 & 9 Vict. c. 76, s. 4, *post*, pp. *1442, *1443. But now by the Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 21 (2), it is provided that legacies payable out of or charged upon

[*1440]

of the personal estate of such person so dying, or out of any personal estate which such person shall have power to dispose of, as he or she shall think fit, or which shall have been charged upon or made payable out of any real estate (*l*), or be directed to be satisfied out of any moneys *to arise by the sale of any real estate of the person so dying, or which such person may have the power to dispose of, whether the same shall be given by way of annuity, or in any other form, shall be deemed and taken to be a legacy within the true intent and meaning of this Act: Provided always, that nothing herein contained shall be construed to extend to the charging with the duties by this Act granted any specific sum or sums of money, or any share or proportion thereof charged by any marriage settlement or deed or deeds upon any real estate, in any case in which any such specific sum or sums, or share of proportion thereof, shall be appointed or apportioned by any Will or testamentary instrument under any power given for that purpose by any such marriage settlement or deed or deeds."

45 Geo. 3, c. 28.

Acts shall not extend to appointments by will under settlements, &c.

Sect. 5. "The duties hereby granted upon legacies, or charged upon or made payable out of any real estate, or out of any moneys to arise by the sale of any real estate, or upon residues, or parts or shares of residues of any such moneys, shall be accounted for, answered, and paid by the trustee or trustees to whom the real estate shall be devised, out of which the legacy or legacies, or share or shares, of any money arising out of the sale or mortgage, or other disposition of such real estate, shall be to be paid or satisfied; or if there shall be no trustees, then by the person or persons (*m*) entitled to such real estate, subject to any such legacy; or by the person or persons empowered or required to pay or satisfy any such legacy; and the said duties shall be retained (*n*) by the person paying or satisfying any such legacy or share of money, in like manner, and according to such rules and regulations, and under and subject to such penalties, as far as the same can be made applicable, as are contained in an Act passed in the thirty-sixth year of the reign

Duties on legacies charged on real estates shall be paid by the trustees, or the persons entitled to such estate, and retained as under 36 Geo. 3, c. 52.

real estate, or the proceeds thereof, shall not be chargeable with legacy duty but with succession duty.

(*l*) See Atty.-Gen. *v.* Pickard, 8 M. & W. 552, *post*, p. *1484. Atty.-Gen. *v.* Lord Hertford, 14 M. & W. 284, *post*, p. *1486.

(*m*) See the Atty.-Gen. *v.* Jackson, 2 C. & J. 101, *post*, pp. *1498, *1505.

(*n*) See Hales *v.* Freeman, 1 Brod. & Bing. 291, *post*, p. *1506.

[*1441]

of his present Majesty, intituled, *An Act for repealing *certain duties on legacies and shares of personal estates, and for granting other duties thereon in certain cases.*"

45 Geo. 3, c. 28.

The statue 48 Geo. III. c. 149, repealing the duties granted by the last act (except arrears, which are to be recoverable by the same ways and means, &c., in all respects, as if this act had not been made), enacts, by sect. 2, "That from and after the 10th of October, 1808, there shall be raised, levied, and paid," the several duties specified in the schedule; in which schedule, part 3, is contained the following: "For every legacy, &c., given by any Will or testamentary instrument of any person who died before or upon the 5th of April, 1805, out of his or her personal or movable estate, and which shall be paid, delivered, retained, satisfied, or discharged, after the 10th of October, 1808," the several duties, after the rates therein specified. And "for every legacy, &c., &c., of any person who shall have died after the 5th of April, 1805, either out of his or her personal or movable estate, or out of or charged upon his or her real or heritable estate, or out of any moneys to arise by the sale, mortgage or other disposition of his or her real or heritable estate, or any part thereof, and which shall be paid, delivered, retained, satisfied, or discharged after the 10th day of October, 1808," the several other duties thereafter specified.

48 Geo. 3, c. 149.

This statute was succeeded by the latest Stamp Act, 55 Geo. III. c. 184, which repeals the last-mentioned duties, with the same exception of arrears, and imposes the new duties above specified at large (*o*).

A fuller and more explicit definition of a legacy is contained in the later statute of 8 & 9 Vict. c. 76, s. 4, by which, after reciting that "under or by virtue of the said several recited Acts (55 Geo. III. c. 184, 5 & 6 Vict. c. 82, 8 & 9 Vict. c. 2), certain duties have been granted and are now payable in Great Britain and Ireland respectively upon *legacies, and doubts have been entertained whether certain gifts by Will or testamentary instrument are legacies liable to the said duties, and it is expedient to remove such doubts," it is enacted, "that from and after the passing of this Act, every gift by any Will or testamentary instrument of any person, which by virtue of any such Will or testamentary instrument is or shall be payable, or shall have effect or be satisfied out of the personal or movable

What gifts are to be deemed legacies.

8 & 9 Vict. c. 76, s. 4.

(*o*) *Ante*, p. *1405.

[*1442] [*1443]

estate or effects of such person, or out of any personal or movable estate or effects which such person hath had or shall have had power to dispose of, or which gift is or shall be payable, or shall have effect or be satisfied out of, or is or shall be charged or rendered a burden upon the real or heritable estate of such person, or any real or heritable estate, or the rents or profits thereof (*p*) which such person hath had or shall have had any right or power to charge, burden or affect with the payment of money, or out of or upon any moneys to arise by the sale, burden, mortgage, or other disposition of any such real or heritable estate or any part thereof, whether such gift shall be by way of annuity or in any other form, and also every gift which shall have effect as a donation *mortis causa* shall be deemed a legacy within the true intent and meaning of all the several Acts granting or relating to duties on legacies in Great Britain and Ireland respectively, and shall be subject and liable to the said duties accordingly (*q*). Provided always, *that no sum of money, which

(*p*) But now by the Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), s. 21 (2), it is provided that legacies payable out of or charged upon real estate or the proceeds thereof shall not be chargeable with legacy duty but with succession duty.

(*q*) It will be seen by reference to s. 38 (2) of 44 Vict. c. 12, that the accounts, in reference to which the duties on accounts are imposed, have to include property taken as a *donatio mortis causa:* the result is that there are payable in respect of such property both legacy duty and stamp duty in the nature of probate duty. And thus property the subject of a *donatio mortis causa*, which, as appears in an earlier portion of this work, partakes partly of the nature of a legacy and partly of the nature of a gift *inter vivos* is treated for the purpose of taxation as part of the estate of the testator or intestate. Sect. 38 also enlarges the property so to be treated by including in the account of the deceased's estate certain gifts and successions *inter vivos*, but it does not nor does any other legislation render such gifts and successions liable to legacy duty. The operation of sect. 38 has been somewhat extended by sect. 11 of 52 Vict. c. 7, which amplifies the definitions in sub-sect. 2 of sect. 38, and practically repeals the provisions in sub-sect. 3 for return of duty. These sections are as follows:—44 Vict. c. 12, s. 38 (2). "The personal or movable property to be included in an account shall be property of the following descriptions, viz.: (a) Any property taken as a *donatio mortis causa* made by any person dying on or after the 1st day of June, 1881, or taken under a voluntary disposition made by any person so dying purporting to operate as an immediate gift *inter vivos*, whether by way of transfer, delivery, declaration of trust or otherwise which shall not have been *bona fide* made three months before the death of the deceased.

(b) Any property which a person dying on or after such day, having been absolutely entitled thereto, has voluntarily caused or may voluntarily cause to be transferred to or vested in himself and any other person jointly, whether by disposition or otherwise, so that the beneficial interest therein, or

[*1444]

by any marriage settlement is or shall be subjected to any limited power of appoint*ment to or for the benefit of any person or persons therein specially named or described as the object or objects of such power, or to or for the benefit of the issue of any such person or persons, shall be liable to the said duties or legacies under the Will in which such sum is or shall be appointed or apportioned in exercise of such limited power."

8 & 9 Vict. c. 76, s. 4.

8 & 9 Vict. c. 76, s. 4.

in some part thereof passes or accrues by survivorship on his death to such other person.

(c) Any property passing under any past or future voluntary settlement made by any person dying on or after such day by deed or any other instrument not taking effect as a Will, whereby an interest in such property for life or any other instrument not taking effect as a Will, whereby an interest in such property for life, or any other period determinable by reference to death is reserved either expressly or by implication to the settlor, or whereby the settlor may have reserved to himself the right, by the exercise of any power to restore to himself or to reclaim the absolute interest in such property."

52 Vict. c. 7, s. 11, enacts: "Sub-section 2 of sect. 38 of the Customs and Inland Revenue Act, 1881, is hereby amended as follows:—The description of property marked (a) shall be read as if the word 'twelve' were substituted for the word 'three' therein, and the said description of property shall include property taken under any gift, whenever made, of which property *bona fide* possession and enjoyment shall not have been assumed by the donee immediately upon the gift and thenceforward retained, to the entire exclusion of the donor, or of any benefit to him by contract or otherwise: The description of property marked (b) shall be construed as if the expression 'to be transferred to or vested in himself and any other person' included also any purchase or investment effected by the person who was absolutely entitled to the property either by himself alone or by arrangement with any other person:

The description of property marked (c) shall be construed as if the expression 'voluntary settlement' included any trust whether expressed in writing or otherwise, in favor of a volunteer, and if contained in a deed or other instrument effecting the settlement, whether such deed or other instrument was made for valuable consideration or not as between the settlor and any other person, and as if the expression 'such property,' wherever the same occurs, included the proceeds of sale thereof: The charge under the said section shall extend to money received under a policy of assurance effected by any person dying on or after the 1st day of June, 1889, on his life, where the policy is wholly kept up by him for the benefit of a donee, whether nominee or assignee, or a part of such money in proportion to the premiums paid by him, where the policy is partially kept up by him for such benefit."

(2) A return of stamp duty shall not be made under sub-section 3 of the said section 38 by reason of or in relation to any account delivered on or after the 1st day of June, 1889.

[*1445]

By stat. 16 & 17 Vict. c. 51 (An Act for granting to her Majesty Duties on Succession to Property, and for altering certain provisions of the Acts charging Duties on Legacies and Shares of Personal Estates), it is enacted, by sect. 1, that "in the construction and for the purposes of this Act,

16 & 17 Vict. c. 51 (Succession Duty Act).

The term 'Real Property' shall include all freehold, copyhold, customary, leasehold and other hereditaments, and heritable property, whether corporeal or incorporeal, in Great Britain and Ireland, except money secured on heritable property in Scotland, and all estates in any such hereditaments:

Interpretation of certain terms in this Act:

The term 'Personal Property' shall not include leaseholds, but shall include money payable under any engagement, and money secured on heritable property in Scotland, and all other property not comprised in the preceding definition of real property (*r*):

*The term 'Property' alone shall include real property and personal property:

(*r*) Succession duty is not payable on legacies given by the will of a person domiciled in a foreign country: Wallace *v.* Atty.-Gen., L. R. 1 Ch. 1; but property to which there is succession under an English settlement vested in British trustees, whether the settlement be made by an alien or a British subject, and whether the settlement be made by deed or will, and wherever the property is locally situate, is liable to succession duty: Atty.-Gen. *v.* Campbell, L. R. 5 H. L. 524. Lyall *v.* Lyall, L. R. 15 Eq. 1. And it must be remembered that although according to the decision in Wallace *v.* Atty.-Gen., *ubi supra*, succession duty is not payable on legacies given by the will of a person domiciled in a foreign country, yet where a testator with a foreign domicile by his will directs an investment in England in trust, and such investment is made, succession duty will be payable in respect of the succession under the trust: Re Badart's Trusts, L. R. 10 Eq. 288. Lyall *v.* Lyall, *ubi supra;* but unless the funds have come to the hands of the English trustees at the time of the death of the person on whose death succession duty is claimed, no duty will be payable: Lyall *v.* Lyall, *ubi supra.* The word "property" includes foreign movable property, as, for instance, funds or shares of a foreign government or corporation comprised in a British settlement, vested in trustees, subject to British jurisdiction, and recoverable by action in a British court; the mere fact of the person beneficially entitled under a settlement being a foreigner is not sufficient to exempt him from succession duty: Re Cigala's Settlement, 7 C. D. 351. A covenant to pay money upon death, accompanied with a disposition of the fund covenanted to be paid, is a disposition of property within sect. 2. See Atty.-Gen. *v.* Montefiore, 21 Q. B. D. 461. Lord Advocate *v.* Roberts' Trustees, 21 Sco. Sess. Cas. 2nd ser. 449. Re Micklethwaite, 11 Ex. 452. And *compare* Re Higgins, 31 C. D. 142.

[*1446]

The term 'Succession' shall denote any property chargeable with duty under this Act (*rr*):

16 & 17 Vict. c. 51.

The term 'Trustee' shall include an executor and administrator, and any person having or taking on himself the administration of property affected by any express or implied trust:

The term 'Person' shall include a body corporate, company, and society:

*The term 'Legacy Duty Acts' shall denote the Acts now in force for charging duties on legacies and shares of the personal estates of deceased persons."

16 & 17 Vict. c. 51.

What disposition and devolutions of property shall confer successions:

Sect. 2. "Every past or future disposition of property, by reason (*s*) whereof any person has or shall become beneficially entitled to any property or the income thereof upon the death of any person dying after the time appointed for the commencement of this Act, either immediately or after any interval, either certainly or contingently (*t*), and either originally or by way of substitutive limitation and every devolution by law of any beneficial interest in property, or the income thereof, upon the death of any person dying after the time appointed for the commencement of this Act, to any other person in possession or expectancy, shall be deemed to have conferred or to confer on the person entitled by reason of any such disposition or devolution a 'Succession' (*u*); and the term 'Successor' shall denote the person so entitled; and the term 'Predecessor' (*x*) shall denote settlor, dis*poner, testator, obligor,

Definitions of the terms "successor," "predecessor."

16 & 17 Vict. c. 51.

(*rr*) As to the effect of sub-s. (4) of sect. 6 of the Customs and Inland Revenue Act, 1889 (52 & 53 Vict. c. 7), incorporating into sub-s. (1) of that act the definition of the term "succession" contained in this section, see the case of Atty.-Gen. *v.* Aberdare [1892], 2 Q. B. 684, *post*, *1477 (*a*).

(*s*) As to the construction of these words, see Wilcox *v.* Smith, 4 Drewr. 40.

(*t*) As to what person may properly be said to be contingently entitled after an interval, see Atty.-Gen. *v.* Gell, 3 Hurl. & C. 615.

(*u*) As to what shall constitute a succession, see Atty.-Gen. *v.* Yelverton, 7 H. & N. 306. Atty.-Gen, *v.* Gardner, 1 Hurl. & C. 639. Ring *v.* Jarman, L. R. 14 Eq. 357. Atty.-Gen. *v.* Robertson [1892], 2 Q. B. 694. [1893], 1 Q. B. 293. A conveyance or assignment by way of *bona fide* sale does not create a succession within the meaning of this act. Fryer *v.* Morland, 3 C. D. 675. And compare De Rechberg *v.* Beeton, 38 C. D. 192.

(*x*) As to what constitues a predecessor, see Re De Lancey, L. R. 4 Ex. 345. Atty.-Gen. *v.* Cecil, L. R. 5 Ex. 263. Atty.-Gen. *v.* Littledale, L. R. 5 Ex. 275. L. R. 5 H. L. 290. With regard to real property where the succession is by disposition the predecessor is the settlor, and where by devolution the predecessor is the person last in posses-

[*1447] [*1448]

ancestor, or other person from whom the interest of the successor is or shall be derived" (*y*).

Sect. 3. "Where any person shall, at or after the time *appointed

sion: Lord Saltoun *v.* Lord Advocate, 3 Macq. H. of L. 673. Where a power is created to be exercised over an estate, the donor of the power, the person out of whose estate a benefit or succession is to be derived, is within sect. 2 the predecessor of the person taking such benefit or succession: Charlton *v.* Atty.-Gen., 4 A. C. 427. See also Lord Braybrooke *v.* Atty.-Gen., 9 H. L. C. 150, Atty.-Gen. *v.* Floyer, *ibid.* 477. Atty.-Gen. *v.* Smythe, *ibid.* 497. See also Atty.-Gen. *v.* Sibthorp, 3 H. & N. 424. In the case of an appointment by a donee of a general power which falls within sect. 2, and does not fall within sect. 4, the appointees must be held to derive their interest from the donor of the power as predecessor and not from the donee, and this, whether the power be joint or sole: Re Barker, 7 H. & N. 109. Charlton *v.* Atty.-Gen., 4 A. C. 427. Atty.-Gen. *v.* Mitchell, 6 Q. B. D. 548. It has been perfectly well settled since the case of the Lord Braybrooke *v.* Atty.-Gen., 9 H. L. C. 150, that where there is a family arrangement for a resettlement of an estate, by which the tenant for life takes back his life estate and the powers which he had before, then everything else under the settlement must necessarily come out of the rest of the estate which belonged to the tenant in tail, and therefore the succession must be derived from the tenant in tail; Atty.-Gen. *v.* Dowling, 6 Q. B. D. 179, *per* Lord Selborne. It is different if the power of appointment in respect of the estate is granted for value given, for then the donee of the power may be the predecessor, although he is not the owner of the estate: Atty.-Gen. *v.* Baker, 4 H. & N. 19. Re Jenkinson, 24 Beav. 64. Atty-Gen. *v.* Dowling, 6 Q. B. D. 177. See also Atty.-Gen. *v.* Yelverton, 7 H. & N. 306: but a tenant for life will not be considered the predecessor unless at the time of the settlement he had or claimed to have an interest in the estate subject to the power, or was a creditor on the estate: Atty.-Gen. *v.* Floyer, 9 H. L. C. 477. Marriage is not a disposition for valuable consideration so as to make the donee of the power a purchaser: Re Ramsay's Settlement, 30 Beav. 75. Further it should be noted that the case of a family settlement is not within the first branch of sect. 4; for the first branch of that section points to an absolute power, practically equivalent to property. A general power in a family settlement which cannot be exercised without the concurrence of two minds is not equivalent to a joint property in the two donees: *per* Lord Selborne in Charlton *v.* Atty.-Gen., 4 A. C. 427. The words of sect. 4 apply to the case of one person possessing a general power to dispose of property as an absolute owner, and not to a power given in a family settlement to a father and son, where one is intended to be a check upon the other in the exercise of the power: *per* Lord Cairns, L. C., *ibid.* As to voluntary nomination under the Customs Annuity and Benevolent Fund in rendering the fund liable to succession duty, see Atty.-Gen. *v.* Abdy, 1 H. & C. 296: *aliter* as to a nomination to secure an advance.

(*y*) The general plan of the act is expounded by Lord Justice Turner in Oldfield *v.* Preston, 3 De G. F. & J. 416. See also Fryer *v.* Morland, 3 C. D. 675.

[*1449]

for the commencement of this Act, have any property vested in them jointly, by any title not conferring on them a succession, any beneficial interest in such property accruing to any of them by survivorship shall be deemed to be a succession; and every person to whom any such interest shall accrue shall be deemed to be the successor; and the person upon whose death such accruer shall take place shall be deemed to be the predecessor; and where any persons after the time appointed for the commencement of this Act shall take any succession jointly, they shall pay the duty, if any, chargeable thereon by this Act in proportion to their respective interests in the succession; and any beneficial interest in such succession accruing to any of them by survivorship shall be deemed to be a new succession, derived from the predecessor from whom the joint title shall have been derived" (z).

16 & 17 Vict. c. 51.

Joint tenants taking by survivorship to be deemed successors.

Sect. 4. "Where any person shall have a general power of appointment under any disposition of property taking effect (a) upon the death of any person dying after the time appointed for the commencement of this Act, over property, he shall, in the event of his making any appointment thereunder, be deemed to be entitled, at the time of his exercising such power, to the property or interest thereby appointed as a succession derived from the donor of the power; and where any person shall have a limited power of appointment, under *a disposition taking effect, upon any such death, over property, any person taking any property by the exercise of such power shall be deemed to take the same as a succession derived from the person creating the power as predecessor" (b).

General powers of appointment to confer successions.

16 & 17 Vict. c. 51.

(z) It was formerly said that in respect of property which had come to a husband and wife jointly there could be no succession by survival to the survivor, because the tenancy was by entireties: whether the effect of the Married Women's Property Act, 1882, has been to alter this, has not yet been decided. As to the effect generally of the act on property coming to a husband and wife jointly, see Re March, 27 C. D. 166. Re Jupp, 39 C. D. 148. Re Dixon, 42 C. D. 306. See *ante*, pp. *961, *1327.

(a) The words "taking effect" refer to the "power" and not to the "disposition," and therefore where a power came into operation before the commencement of the act it was held that sect. 4 did not apply, although the appointment did not take effect till after the commencement of the act: Re Lovelace, 4 De G. & J. 340. 28 L. J. Ch. 489. Atty.-Gen. v. Mitchell, 6 Q. B. D. 548.

(b) This section does not restrict the operation of the duty as regards appointments to cases where the powers are created by wills taking effect, or by settlements made, after the commencement of the act: Re Lovelace, 4 De G. & J. 340. The rule settled by this case, together with Re Wallop's

Sect. 5. "Where any property shall, at or after the time appointed for the commencement of this Act, be subject to any charge, estate or interest determinable by the death of any person, or at any period ascertainable only by reference to death, the increase of benefit accruing to any person or persons upon the extinction or determination of such charge, estate or interest, shall be deemed to be a succession accruing to the person, or the persons if more than one, then entitled beneficially to the property or the income thereof, according to his or their respective estates or interests therein, or beneficial enjoyment thereof; and the person or persons from whom such successor or successors respectively shall have derived title to the property so charged shall be *deemed to be the predecessor or predecessors, as the case may be" (c).

Extinction of determinable charges to confer successions.

16 & 17 Vict. c. 51.

Sect. 6. "Provided, that no person entitled, at the time appointed for the commencement of this Act, to the immediate reversion in any real property expectant upon the determination of any lease for life or for years determinable on life, shall be chargeable with duty in respect of such determination, in the event of the same occurring in his lifetime."

Persons now beneficially entitled to real property subject to leases for life, not liable to duty.

case, 1 De G. J. & S. 656, is that, (in cases where sect. 4 applies,) where a general power is given and exercised, the appointee is a person taking in succession to the appointor, and the appointor is also a successor to the donor of the power: Re Chapman's Trusts, 2 H. & M. 450, *per* Wood, V. C. Atty.-Gen. *v.* Upton, L. R. 1 Ex. 224. But *contra*, if sect. 2 and not sect. 4 applies: Re Barker, 7 H. & N. 109; where it appears to have been held that the appointee was liable as on a succession derived from the donor of the power. Where A., having a general power of appointment, subject to a life interest in his sister B., appointed by will to C. for life, with remainder to such persons as B. should appoint; and A. died, and then B. died in C.'s lifetime having appointed to strangers; and then C. died; it was held that B.'s appointees were liable to 10*l.* per cent. legacy duty, but that the fund was not liable to succession duty in respect of the succession to A., by reason of the exemption in the 14th section, having regard to the principle indicated by the 16th section: Re Chapman's Trusts, 2 H. & M. 447. As to what is a general power within the meaning of this section, see Charlton *v.* Atty.-Gen., note (*x*), *ante*.

(*c*) Sect. 5 relates to property subject to some charge, estate or interest, determinable on death, and enacts in substance that the increase of benefit accruing on the determination of such charge, estate or interest, to the person beneficially entitled to the property subject thereto, shall be a succession—that is to say, the section provides for the case of a person having property relieved from a burden by the death of another. It does not therefore apply in a case where property is limited to pass beneficially, alternatively on the lapse of a time certain or on a death, which-

Dispositions accompanied by the reservation of a benefit to the grantor, &c., to confer successions.

Sect. 7. "Where any disposition of property, not being a *bona fide* sale, and not conferring an interest expectant on death on the person in whose favor the same shall be made, shall be accompanied by the reservation or assurance of or contract for any benefit to the grantor, or any other person, for any term of life or for any period ascertainable only by reference to death, such disposition shall be deemed to confer at the time appointed for the determination of such benefit an increase of beneficial interest in such property, as a succession equal in annual value to the yearly amount or yearly value of the benefit so reserved, assured, or contracted for, on the person in whose favor such disposition shall be made."

16 & 17 Vict. c. 51.

Dispositions to take effect at periods depending on death, or made for evading duty, to confer successions.

*Sect. 8. "Where any disposition of property shall be made to take effect at a period ascertainable only by reference to the date of the death of any person dying after the time appointed for the commencement of this Act, such disposition shall be deemed to confer a succession on the person in whose favor the same shall be made; and where any disposition of property shall purport to take effect presently or under such circumstances as not to confer a succession, but by the effect or in consequence of any engagement, secret trust, or arrangement capable of being enforced in a Court of Law or Equity, the beneficial ownership of such property shall not *bona fide* pass according to such disposition, but shall in fact devolve to any person on death, or at some period ascertainable only by reference to death, then such last-mentioned person shall be deemed to acquire the property so passing as a succession derived from the person making the disposition as the predecessor; and where any Court of competent jurisdiction shall declare any disposition to have been fraudulent and made for the purpose of evading the duty imposed by this Act, it shall be lawful for such Court to declare a succession to have been conferred on such person at such time and to such an extent as such Court shall think just; and such last-mentioned person

ever shall first occur, so as to entitle the person to whom the property passes, in the event of the death first occurring, to pay duty only on the value of the estate between the death and the end of the time limited, as being "the increase of benefit" accruing by reason of the death, but he must pay duty on the whole value of the estate accruing, as being a succession within sect. 2. Atty.-Gen. *v.* Noyes, 8 Q. B. D. 125. The determination of a dower, or jointure, by death will confer a succession on the person entitled to the estate relieved: Harding *v.* Harding, 2 Giff. 597.

[*1452]

shall be deemed to have taken a succession accordingly derived from the person making such disposition as predecessor."

Sect. 9. "The duties hereinafter imposed shall be considered as stamp duties, and shall be under the care and management of the Commissioners of Inland Revenue, hereinafter called 'The Commissioners,' who, by themselves and their officers, shall have the same powers and authorities for the collection, recovery and management thereof, as are by an Act passed in the session holden in the twelfth and thirteenth years of the reign of her present Majesty, chapter one, or by any other Act or Acts, vested in them for the collection, recovery and management of any stamp duties; and shall provide proper stamps for denoting *the rate *per centum* of the duties payable under this Act; and shall have all other powers and authorities requisite for carrying this Act into execution."

Duties to be under the care and management of the Commissioners of Inland Revenue.

16 & 17 Vict. c. 51.

Sect. 10. "There shall be levied and paid to her Majesty in respect of every such succession as aforesaid, according to the value thereof, the following duties (*d*) (that is to say,)

Duties on successions.

Where the successor shall be the lineal issue or lineal ancestor of the predecessor, a duty at the rate of one pound *per centum* upon such value (*e*):

(*d*) By the Customs and Inland Revenue Act, 1888, 51 & 52 Vict. c. 8, s. 21 (1), it is provided that the following additional duties besides those chargeable by this section shall be charged on successions on deaths occurring on or after July 1st, 1888; *viz.* Where the successor shall be the lineal issue or lineal ancestor of the predecessor, a duty at the rate of ten shillings per cent. upon the value of the interest of the successor; in all other cases a duty of thirty shillings on that interest: but this additional duty is not to be payable on leaseholds passing by will or devolution of law, or on property included in an account according to the value whereof duty is payable under 44 & 45 Vict. c. 12.

(*e*) By sect. 41 of 44 Vict. c. 12, it is provided that: "In respect of any succession to property according to the value whereof duty shall have been paid on the affidavit or inventory or account in conformity with this Act, the duty at the rate of one pound per centum imposed by the Succession Duty Act, 1853, shall not be payable." The exemption in sect. 41 applies not only to duties payable in connection with the will or intestacy which gives rise to the claim for stamp duty, but to duties in connection with some other will or intestacy or some prior disposition creating a succession; that is to say, its application is not limited to cases where the succession duty which would have been claimable but for the section and the duty the payment of which under stat. 55 Geo. III. c. 184, is the basis of the exemption, are payable in respect of the same administration: Re Haygarth's Trusts, 22 C. D. 545.

[*1453]

Where the successor shall be a brother or sister, or a descendant of a brother or sister of the predecessor, a duty at the rate of three pounds *per centum* upon such value:

Where the successor shall be a brother or sister of the father or mother, or a descendant of a brother or sister of the father or mother of the predecessor, a duty at the rate of five pounds *per centum* upon such value:

*Where the successor shall be a brother or sister of the grandfather or grandmother, or a descendant of the brother or sister of the grandfather or grandmother of the predecessor, a duty at the rate of six pounds *per centum* upon such value:

16 & 17 Vict. c. 51.

Where the successor shall be in any other degree of collateral consanguinity to the predecessor than is hereinbefore described, or shall be a stranger in blood to him, a duty at the rate of ten pounds *per centum* upon such value" (*f*).

Provision as to married persons chargeable with succession or legacy duties.

Sect. 11. "Where any person chargeable with duty under this Act in respect of any succession, or chargeable with duty under the Legacy Duty Acts in respect of any legacy bequeathed to him or her by a testator dying after the time appointed for the commencement of this Act, or in respect of the personal estate of any person dying after the same period, shall have been married to any wife or husband of nearer consanguinity than himself or herself to the predecessor, testator or deceased person, then the person taking such succession, legacy or personal estate, shall pay in respect thereof the same rate of duty only as such his or her wife or husband would have been chargeable with if she or he had taken the same."

What duties payable when the successor is also the predecessor.

Sect. 12. "Where any person shall take a succession under a disposition made by himself, then, if at the date of such disposition he shall have been entitled to the property comprised in the succession expectantly on the death of any person dying after the time appointed for the commencement of this Act, and such person shall have died during the continuance

(*f*) Although the *status* of legitimacy will be determined according to the law of the domicil of the parents; Re Goodman's Trusts, 17 C. D. 266. Skottowe *v.* Young, L. R. 11 Eq. 474; yet the mere fact that illegitimate children acknowledged by the parent may by the law of the domicil be entitled to take his property, will not prevent them being treated as strangers in blood to their putative father for the purposes of this section, unless the law of domicil also legitimates them: Atkinson *v.* Anderson, 21 C. D. 100.

of such disposition, he shall be chargeable with *duty on his succession, at the same rate as he would have been chargeable with if no such disposition had been made; but a successor shall not in any other case be chargeable with duty upon a succession taken under a disposition made by himself, and no person shall be chargeable with duty upon the extinction or determination of any charge, estate or interest created by himself, unless at the date of the creation thereof he shall have been entitled to the property subjected thereto expectantly on the death of some person dying after the time appointed for the commencement of this Act" (*g*).

16 & 17 Vict. c. 51.

Sect. 13. "Where the successor shall derive his succession from more predecessors than one, and the proportional interest derived from each of them shall not be distinguishable, it shall be lawful for the commissioners to agree with the successor as to the duty payable; but if no such agreement shall be made, the successor shall be deemed to have derived his succession in equal proportions from each predecessor, and shall be chargeable with duty accordingly" (*h*).

Provision as to joint predecessors.

Sect. 14. "Where the interest of any successor in any personal property shall, before he shall have become entitled thereto in possession, have passed by reason of death to any other successor or successors, then one duty only shall be paid in respect of such interest, and shall be due from the successor who shall first become entitled thereto in possession; but such duty shall be at the highest rate which, if every such successor had been subject to duty, would have been payable by any one of them" (*i*).

Duty on transmitted successions.

(*g*) See as to the construction of this section, Atty.-Gen. *v.* Sibthorp, 3 H. & N. 424. Atty.-Gen. *v.* Braybrooke, 5 H. & N. 488, S. C. *sub nom.* Lord Braybrooke *v.* Atty.-Gen., 9 H. L. C. 450. Atty.-Gen. *v.* Gardner, 1 H. & C. 639. Atty.-Gen. *v.* Cecil, L. R. 5 Ex. 263.

(*h*) As to the construction of this section, see Atty.-Gen. *v.* Baker, 4 H. & N. 19.

(*i*) See Re Chapman's Trusts, 2 H. & M. 447. Atty.-Gen. *v.* Cleave, 31 L. T. N. S. 86. Where an interest in personal property has been transmitted before it has ripened into enjoyment, it matters not whether the person originally entitled died before or after the commencement of the act, only one duty is payable on any succession to such property, whether such duty be legacy or succession duty. If the duty is succession duty and the interest has passed through more than one successor, then under this section the duty payable shall be the highest that would have been paid by any of such successors. If the duty be legacy duty, then under sect. 18 no succession duty of any kind is payable: Atty.-Gen. *v.* Littledale, L. R. 5 Ex. 275. L. R. 5 H. L. 290.

[*1455]

*Sect. 15. "Where at the time appointed for the commencement of this Act, any reversionary property expectant on death shall be vested, by alienation or other derivative title, in any person other than the person who shall have been originally entitled thereto under any such disposition or devolution as is mentioned in the second section of this Act, then the person in whom such property shall be so vested shall be chargeable with duty in respect thereof as a succession at the same time and at the same rate as the person so originally entitled would have been chargeable with if no such alienation had been made or derivative title created; and where, after the time appointed for the commencement of this Act, any succession shall, before the successor shall have become entitled thereto or to the income thereof in possession, have become vested by alienation or by any title not conferring a new succession in any other person, then the duty payable in respect thereof shall be paid at the same rate and time as the same would have been payable if no such alienation had been made or derivative title created; and where the title to any succession shall be accelerated by the surrender or extinction of any prior interests, then the duty thereon shall be payable at the same time and in the same manner as such duty would have been payable if no such acceleration had taken place" (*k*).

16 & 17 Vict. c 51.

Duties payable in respect of transferred interests.

(*k*) As to the construction of this section, see Atty.-Gen. *v.* Gardner, 1 Hurl. & C. 639. Atty.-Gen. *v.* Rushton, 2 Hurl. & C. 812. Atty.-Gen. *v.* Cecil, L. R. 5 Ex. 263. Atty.-Gen. *v.* Littledale, L. R. 5 Ex. 275. L. R. 5 H. L. 290. "By alienation or by any title not conferring a new succession" means "either by alienation or by any title other than alienation, in both cases not conferring a new succession." Settlement after the Succession Duty Act: A. tenant for life. B. remainderman in fee. A. and B. convey their estates for money to C. in fee. C. dies having devised to D. in fee. D. pays duty on his succession from C. and then sells: On A.'s death no more succession duty will be payable than has already been paid by D.: Re Cooper and Allen's Contract, 4 C. D. 802. If a tenant for life and a remainderman respectively mortgage their interests, and the mortgagees sell, the purchaser takes the remainderman's succession by alienation not conferring a succession within sect. 15, and will accordingly be liable to duty on the death of the tenant for life if he still remains the owner, *aliter* if he dies, for then there is a new succession, and the successor coming in under that title will have to pay the succession duty: *Ibid.* Where a succession is alienated, and falls into possession after the death of the alienor, duty is payable under this section at the same rate as if no alienation had been made, and the alienor had survived the falling into possession: Sol.-Gen. *v.* Law Reversionary Interest Society, L. R. 8 Ex. 233. Sums advanced to children under a power out of funds settled by marriage settlement on the usual trusts are liable to succession duty as a succession the title to which has been

[*1456]

*Sect. 16. "Where property shall become subject to a trust for any charitable or public purposes, under any past or future disposition, which, if made in favor of an individual, would confer on him a succession, there shall be payable in respect of such property, upon its becoming subject to such trusts, a duty at the rate of ten pounds *per centum* upon the amount or principal value of such property; and it shall be lawful for the trustee of any such property to raise the amount of any duty due in respect thereof, with all reasonable expenses, upon the security of the charity property, at interest, with *power for him to give effectual discharges for the money so raised" (*l*).

16 & 17 Vict. c. 51.

Succession subject to trusts for charitable or public purposes chargeable with duty.

16 & 17 Vict. c. 51.

Sect. 17. "No policy of insurance on the life of any person shall create the relation of predecessor and successor between the insurers and the assured, or between the insurers and any assignee of the assured, and no bond or contract made by any person *bona fide* for valuable consideration in money or money's worth, for the payment of money or money's worth after the death of any other person, shall create the relation of predecessor and successor between the person making such bond or contract and the person to or with whom the same shall be made; but any disposition or devolution of the moneys payable under such policy, bond, or contract, if otherwise such as in itself to create a succession within the provisions of this Act, shall be deemed to confer a succession" (*m*).

Provisions for life policies and certain *post obit* bonds.

accelerated within the meaning of this section: *Ex parte* Sitwell, 21 Q. B. D. 466. But where a tenant for life and remainderman join in disentailing and resettling a property, and limiting an annuity immediately to the remainderman during the joint lives of himself and the tenant for life, that is not an acceleration of interest within this section: Inland Revenue Commissioners *v.* Harrison, L. R. 7 H. L. 1. The successor from whom duty is payable is the person who on the happening of the death eventually becomes beneficially entitled in possession; that which was conferred upon any previous successor was only an expectant interest, not a succession. The interest of an executor, not being beneficial, is not a succession within sect. 2 or within sect. 15; for sect. 15 imposes no new duty, only a duty in substitution for that imposed by sect. 2: Atty.-Gen. *v.* Littledale, L. R. 5 Ex. 275. L. R. 5 H. L. 290.

(*l*) Atty.-Gen. *v.* Montefiore, 21 Q. B. D. 461.

(*m*) Notwithstanding the fact that the exception created by this section is limited to bonds and contracts made by any person *bona fide* for valuable consideration in money or money's worth, for the payment of money or money's worth after the death of any other *person*, a contract for valuable consideration to pay money on the death of the contracting party is not within

16 & 17 Vict. c. 51.
Exemptions.

*Sect. 18. "Where the whole succession or successions derived from the same predecessor, and passing upon any death to any person or persons, shall not amount in money or principal value to the sum of one hundred pounds, no duty shall be payable under this Act in respect thereof or of any portion thereof; and no duty shall be payable under this Act upon any succession, which, as estimated according to the provisions of this Act, shall be of less value than twenty pounds in the whole (*n*), or upon any moneys applied to the payment of the duty on any succession according to any trust for that purpose, or by any person in respect of a succession, who, if the same were a legacy bequeathed to him by the predecessor, would be exempted (*o*) from the payment of duty in respect thereof under the Legacy Duty Acts; and no person shall be charged with duty under this Act in respect of any interest surrendered by him or extinguished before the time appointed for the commencement of this Act; and no person charged with the duties on legacies and shares of personal estate under the Legacy Duty Acts, in respect of any property subject to such duties, shall be charged also with the duty granted by this Act in respect of the same acquisition of the same property" (*p*).

the scope of the act, nor does such a contract create a succession or make the vendor and purchaser thereunder predecessor and successor within the meaning of sect. 2 of the act: see Fryer *v.* Morland, 3 C. D. 675. The 17th section therefore was unnecessary, and must be treated as inserted in the act *ex cautela*. In short, the act only grants a duty on successions to property by persons succeeding to estates by gratuitious title, the only exception being that marriage consideration is treated as if it were a gratuitious title: *per* Jessel, M. R., *ibid.* p. 681: the words "money or money's worth" appearing to have been selected for the purpose of excluding the marriage consideration. Although a purchaser for money or money's worth of a reversion is not within the statute, yet if the purchase is made by trustees under a will, and paid for out of the testator's estate, the beneficiaries entitled to the purchased estate are successors, liable to duty when the reversion falls into possession; De Rechberg *v.* Beeton, 38 C. D. 192. See also Oldfield *v.* Preston, 3 De G. F. & J. 398, in which case it was held that there was no succession as between the subscribers to a tontine.

(*n*) By sect. 10, sub-sect. 2, of the Customs and Inland Revenue Act, 1889, it is provided that, subject to the relief given by sect. 18, succession duty shall be charged on successions under 20*l.* in value.

(*o*) The exemptions here referred to are the special exemptions given by the Legacy Duty Acts, and the section does not extend to cases where no duty was imposed by those acts; in effect the word "exempted" must be construed in its legal sense, and not as meaning "free from": Atty.-Gen. *v.* Fitzjohn, 2 H. & N. 465. Re Wallop's Trusts, 1 De G. J. & S. 656, 672.

(*p*) See Earl Howe *v.* Earl of Lich-

Sect. 19. "No legatee or other person shall, after the time appointed for the commencement of this Act, be chargeable under the Legacy Acts with duty, not then already due, in respect of any leasehold hereditaments of any testator or *deceased person, as belonging to the personal estate of the testator or deceased."

Leasehold estates not to be charged with legacy duty as personal estate.

16 & 17 Vict. c. 51.

Sect. 20. "The duty imposed by this Act shall be paid at the time when the successor or any person in his right or on his behalf, shall become entitled in possession to his succession, or to the receipt of the income and profits thereof; except that if there shall be any prior charge, estate or interest not created by the successor himself, upon or in the succession, by reason whereof the successor shall not be presently entitled to the full enjoyment or value thereof, the duty in respect of the increased value accruing upon the determination of such charge, estate or interest shall, if not previously paid, compounded for or commuted, be paid at the time of such determination; and except that in case of an annuity or property hereby made chargeable as an annuity, the duties shall be paid by such installments as are hereinafter directed or referred to; provided that no duty shall be payable upon the determination of any lease purporting at the date thereof to be a lease at rack-rent, in respect of the increase accruing to the successor upon such determination" (*q*).

Duties to be paid on the successor becoming entitled in possession, but in the case of outstanding interests, on the determination thereof.

Sect. 21. "The interest of every successor, except as herein provided, in real property, shall be considered to be of the value of an annuity equal to the annual value of such property (*r*), after making such allowances as are hereinafter directed, and payable from the date of his becoming entitled thereto in possession, or to the receipt of the income or profits thereof during the residue of his life, or for any less *period during which he shall be entitled thereto; and every such annuity, for the purposes of this Act, shall be valued according to the tables in

The interest of a successor in real property to be considered as an annuity.

field, L. R. 2 Ch. 155. Atty.-Gen. *v.* Littledale, L. R. 5 Ex. 275. L. R. 5 H. L. 290. Atty.-Gen. *v.* Mitchell, 6 Q. B. D. 548.

(*q*) If, however, the prior charge, estate or interest, created by the successor himself, confers a new succession, the person who created the charge only pays the duty upon the increased value of his estate when the charge, estate or interest so created ceases: Re Peyton, 7 H. & N. 265, 287.

(*r*) As to the meaning of the words "annual value of such property," see Atty.-Gen. *v.* Lord Sefton, 2 Hurl. & C. 362. 11 H. L. C. 257. Stock produced by a sale of real estate under the London Dock Act (39 & 40 Geo. III. c. 47), subject to jointure, is real estate: Shard *v.* Shard, 14 Ves. 328.

the schedule annexed to this Act; and the duty chargeable thereon shall be paid by eight equal half-yearly installments, the first of such installments to be paid at the expiration of twelve months next after the successor shall have become entitled to the beneficial enjoyment of the real property in respect whereof the same shall be payable, and the seven following installments at half-yearly intervals of six months each, to be computed from the day on which the first installment shall have become due (*s*), provided that if the successor shall die before all such installments shall have become due, then any installments not due at his decease shall cease to be payable, except in the case of a successor who shall have been competent to dispose by Will of a continuing interest in such property, in which case the installments unpaid at his death shall be a continuing charge on such interest, in exoneration of his other property, and shall be payable by the owner for the time being of such interest" (*t*).

16 & 17 Vict. c. 51.

*Sect. 22. "In estimating the annual value of lands used for agricultural purposes, houses, buildings, tithes, teinds, rent-charges, and other property yielding or capable of yielding income not of a fluctuating character, an allowance shall be made of all necessary outgoings" (*u*).

16 & 17 Vict. c. 51.

Rules for valuing lands, houses, &c.

(*s*) By the Customs and Inland Revenue Act, 1888 (51 Vict. c. 8), s. 22, the successor has the option of paying half the succession duty by four equal annual installments, commencing at the end of a year after entering upon enjoyment, and the other half either upon the day of payment of the last of such installments, or by four further annual installments, with interest at 4*l.* per cent. on the amount remaining unpaid.

(*t*) It has been held that the word "competent" in this section means to refer to the successor's interest in the property, and not to his understanding: Atty.-Gen. *v.* Hallett, 2 H. & N. 368. The case is within the exception engrafted on the proviso notwithstanding the successor becomes competent by his own act after the time of his becoming successor. The power of a tenant in tail in possession to enlarge his estate so that he shall become competent to dispose by will of a continuing interest in the entailed property is incident to the estate which such tenant takes under the instrument creating the entail; and, if he exercises the power, he must be treated, for the purpose of succession duty, as if he had succeeded to such enlarged estate. Thus where a tenant in tail executed a disentailing deed, and died before any installment of duty under the act became due, and his son and devisee (who but for the deed would have been the next tenant in tail) succeeded to the property, he was held liable to satisfy the duty which his father ought to have paid. The interest of the father became under such circumstances, according to the proviso in this section, a "continuing interest," of which the father was "competent to dispose by will," and the duty was a "continuing charge on such interest": Lord Lilford *v.* Atty.-Gen., 8 H. & C. 239. 2 H. L. C. 63.

(*u*) The successor is not entitled under

[*1462]

Sect. 23. "Where timber, trees, or wood, not being coppice or underwood, shall be comprised in any succession, the successor shall be chargeable with duty upon his interest in the net moneys, after deducting all necessary outgoings for the year, which shall from time to time be received from any sales of such timber, trees, or wood, and shall account for and pay the same yearly; provided that no duty shall be payable on the net moneys received from the sale of timber, trees, or wood in any one year, unless such net moneys shall exceed the sum of ten pounds; provided, that if the successor shall be desirous of commuting the duty, and shall deliver to the commissioners an estimate of the net moneys obtainable by him from the sale of such timber, trees, and wood as may, in a prudent course of management of the property, be felled by such successor during his life, the commissioners, if satisfied with such estimate, shall accept the same and assess the duty accordingly."

Rule as to timber.

Sect. 24. "A successor shall not be chargeable with duty in respect of any advowson or church patronage comprised in his succession, unless the same, or some right of presentation, or some other interest in or out of such ad*vowson, or church patronage, shall be disposed of by or in concert with him for money or money's worth, in which case he shall be chargeable with duty upon the amount or value of the money or money's worth for which the same, or any such presentation or interest, shall be so disposed of at the time of such disposal."

Rule as to advowsons.

16 & 17 Vict. c. 51.

Sect 25. "Where a successor, entitled to any real property, subject to any lease by reason whereof he shall not be presently entitled to the full enjoyment thereof, shall not have paid duty in respect of the full yearly value of such property, he shall be chargeable with duty upon his interest in any fine or grassum or other consideration which may be received during his life for the renewal of any such lease, or the grant of any reversionary lease of the same property."

Rule as to property subject to beneficial leases.

Sect. 26. "The yearly value of any manor, opened mine, or other real property of a fluctuating yearly income, shall either be calculated upon the average profits or income derived therefrom, after deducting all necessary outgoings, during such a number of preceding years as shall be agreed upon for this purpose between the commissioners and the successor, before the first payment

Rule as to manors, mines, &c.

this section to a deduction for income tax or the agent's charge for collecting rents: Re Elwes, 3 H. & N. 719: nor to deduction for reasonable expenses of trustees acting under authority of the will: Re Earl Cowley, L. R. 1 Ex. 288.

[*1463]

of duty on the succession shall have become due; or if no such period shall be agreed upon, then the principal value of such property shall be ascertained, and the annual value thereof shall be considered to be equal to interest calculated at the rate of three pounds *per centum per annum* on the amount of such principal value."

Duty payable by corporations, &c., taking real estates.

Sect. 27. "Where any body corporate, company, or society shall become entitled, as successors, to any real property, the duty in respect thereof shall be assessed upon the principal value of such property, but shall be payable by such installments, at such times, and in such manner as the same would be payable if assessed in respect of property devolving on a successor in fee simple; and it shall be lawful for such body corporate, company, or society, or any trustee thereof, to raise the amount of any duty due in respect to their succession *upon the security thereof, at interest, with power for them to give effectual discharges for the money so raised" (x).

16 & 17 Vict. c. 51.

Allowance for fines, &c., paid by successor.

Sect. 28. "If a successor, or any person on his behalf, upon becoming entitled to any copyhold or other real property, shall be subject to any fines, casualties of superiority, compositions, reliefs, or charges incident to the tenure thereof, and due in respect of his succession, he shall be entitled to have a deduction allowed to him of the amount of such fines, casualties, compositions, reliefs, or charges from the assessable value of his interest in such copyhold or other real property."

Real property directed to be sold to be charged as personalty.

Sect. 29. "The interest of any successor in moneys to arise from the sale of real property under any trust for the sale thereof, so far as the same shall not be chargeable with duty under the Legacy Duty Acts, shall be deemed to be personal property chargeable with duty under this Act; provided that where such moneys shall be subject to any trust for the re-investment thereof in the purchase of other real property, to which the successors would not be absolutely entitled, such moneys shall be deemed to be real property, and for the purpose of this Act each successor's interest therein shall be considered to be of the value of an annuity, payable during his life, or for any less period during which he shall be entitled, equal in amount to the annual produce of the actual trust property at the time of his becoming entitled in possession, whether the same shall then be the real property subject to the trust or direction for sale, or any property purchased in substitution

(x) See Sol.-Gen. v. Law Reversionary Interest Society, L. R. 8 Ex. 233.

[*1464]

for it, or any intermediate investment of the produce of the sale of the original property."

Sect. 30. "The interest of any successor in personal property, subject to any trust for the investment thereof in the purchase of real property to which the successor would be absolutely entitled shall, so far as the same shall not be *chargeable with duty under the Legacy Duty Acts, be chargeable with duty under this Act as personal property; and personal property subject to any trust for the investment thereof in the purchase of real property to which the successor would not be absolutely entitled shall, so far as the same shall not be chargeable with duty under the Legacy Duty Acts, be chargeable with duty under this Act as real property: and for the purposes of this Act each successor's interest therein shall be considered to be of the value of an annuity, payable during his life, or for any less period during which he shall be entitled, equal in amount to the annual produce of the actual trust property at the time of his becoming entitled in possession, whether the same shall be the real property directed to be purchased, or any intermediate investment of the personal property directed to be invested in such purchase" (*y*).

Personal property to be invested in real property how to be charged.

16 & 17 Vict. c. 51.

Sect. 31. "Where it shall be required to calculate, for the purposes either of this Act or of the Legacy Duty Acts, the value of any annuity, or of any interest chargeable with duty as an annuity, such value shall, after the time appointed for the commencement of this Act, be calculated according to the tables in the schedule annexed to this Act, and not according to the tables in the schedule annexed to the Act of the Thirty-sixth year of the Reign of King George the Third, chapter fifty-two, and such annuity or interest shall be chargeable with duty accordingly."

Annuities under this act and the Legacy Duty Acts to be valued according to the tables annexed to this act.

Sect. 32. "The following provisions relating to the assessment and payment of duty on personal estate, and the exemption thereof from duty in certain cases, namely, the eighth, tenth, eleventh, twelfth, fourteenth, and twenty-third sections of the said Act of the Thirty-sixth year of the Reign of King George the Third, chapter fifty-two, shall be *applicable to the per-

Provisions as to the assessment of personalty.

(*y*) In Re De Lancey, L. R. 4 Ex. 345, 5 Ex. 102, it was held that money left by will to be applied in the purchase of real estate is chargeable, so long as it is not actually so applied, with duty under the Legacy Duty Acts, and not under this section, however it may devolve.

[*1465] [*1466]

sonal property comprised in any succession, and to the assessment and payment of duty thereon, as if such personal property were a legacy bequeathed by the predecessor to the successor, and were subject to the said provisions, and as if the tables in the said Act referred to were the tables in the schedules annexed to this Act" (*z*).

16 & 17 Vict. c. 51.

Sect. 33. "Where the donee of a general power of appointment shall become chargeable with duty in respect of the property appointed by him under such power, he shall be allowed to deduct from the duty so payable any duty he may have already paid in respect of any limited interest taken by him in such property" (*a*).

Allowance to donee of general power of appointment.

Sect. 34. "In estimating the value of a succession no allowance shall be made in respect of any incumbrance thereon created or incurred by the successor, not made in execution of a prior special power of appointment, but an allowance shall be made in respect of all other incumbrances, and also in respect of any moneys which the successor may previously to his possession have laid out in the substantial repairs or permanent improvement of real property comprised in his succession; provided that upon any successor becoming entitled to real property subject to any prior principal charge, an allowance shall be made to him in respect *only of the yearly sums payable by way of interest or otherwise on such charge as reducing the annual value *pro tanto* of such real property" (*b*).

What allowance to be made for incumbrances.

16 & 17 Vict. c. 51.

Sect. 35. "In estimating the value of a succession no allowance

(*z*) Where a person absolutely entitled to a reversionary interest in personalty settled the same on the usual trusts of a marriage settlement, and on the reversion falling in, paid the whole of the succession duty which had become payable thereon out of his own moneys, it was held, having regard to this section, that he was entitled to be repaid out of the corpus of the fund, and to have the trustees raise the necessary amount: Cuddon *v.* Cuddon, 4 C. D. 583. "The 32nd section says this, that certain provisions of the Legacy Duty Act, specified in the section, shall apply 'to the personal property comprised in any succession and to the assessment and payment of duty thereon, as if such personal property were a legacy bequeathed by the predecessor to the successor, and were subject to the said provisions.' That is, those sections apply when they have any application": *per* Jessel, M. R., Atty.-Gen. *v.* Noyes, 8 Q. B. D. 125, 138.

(*a*) Owners in fee simple are not equivalent to donees of a general power of appointment within the meaning of this section: Re Cooper and Allen's Contract, 4 C. D. 802.

(*b*) See as to the construction of this section, Re Peyton, 7 H. & N. 265.

[*1467]

shall be made in respect of any contingent incumbrance thereon; but in the event of such incumbrance taking effect as an actual burden on the interest of the successor, he shall be entitled to a return of a proportionate amount of the duty so paid by him in respect of the amount or value of the incumbrance when taking effect" (*c*).

No allowance to be made in respect of contingent incumbrances, unless they take effect.

Sect. 36. "In estimating the value of a succession no allowance shall be made in respect of any contingency upon the happening of which the property may pass to some other person; but in the event of the same so passing the successor shall be entitled to a return of so much of the duty paid by him as will reduce the same to the amount which would have been payable by him if such duty had been assessed in respect of the actual duration or extent of his interest."

The duty on successions to be calculated without regard to contingencies.

Sect. 37. "Where a successor shall not have obtained the whole of his succession at the time of the duty becoming payable, he shall be chargeable only with duty on the value of the property or benefit from time to time obtained by him; and whenever any duty shall have been paid on account of any succession, and it shall afterward be proved to the satisfaction of the commissioners that such duty, not being due from the person paying the same, was paid by mistake, or was paid in respect of property which the successor shall have been unable to recover, or from or of which he shall have been evicted or deprived by any superior title, or that for any other reason it ought to be refunded, the commissioners shall thereupon refund the same to the person entitled thereto."

Provision for allowance or return of duty.

*Sect. 38. "Where any successor upon taking a succession shall be bound to relinquish or be deprived of any other property, the commissioners shall, upon the computation of the assessable value of his succession, make such an allowance to him as may be just in respect of the value of such property" (*d*).

16 & 17 Vict. c. 51.

Allowance to be made to successor in respect of relinquished property.

(*c*) As to incumbrances conferring a new succession, see *ante*, sect. 15, p. *1456.

(*d*) Under this section it was held that if a tenant for life and his son the first tenant in tail under a will or a previous settlement resettle the estate, and by such resettlement an annuity, charged upon the estate, is given to the son during his father's life, and the father dies and the son succeeds to the estate on which the annuity is charged, there must be, in calculating the succession duty under this section, an allowance made to the son in respect of the amount of the annuity. Lord Braybrooke *v.* Atty.-Gen., 9 H. L. C. 150. Commissioners of Inland Revenue *v.* Harrison,

Power for commissioners to compound duties.

Sect. 39. "Where, in the opinion of the commissioners, any succession shall be of such a nature, or so disposed or circumstanced, that the value thereof shall not be fairly ascertainable under any of the preceding directions, or where, from the complication of circumstances affecting the value of a succession, or affecting the assessment or recovery of the duty thereon, the commissioners shall think it expedient to exercise this present authority, it shall be lawful for them to compound the duty payable on the succession upon such terms as they shall think fit, and to give discharges to the successor, upon payment of duty according to such composition; and it shall be lawful for them, in any special cases in which they may think it expedient so to do, to enlarge the time for payment of any duty."

16 & 17 Vict. c. 51.

Power of commissioners to receive duty in advance.

Sect. 40. "It shall be lawful for the commissioners to receive any duty tendered to them in advance, and to allow *discount thereon at the rate of four pounds *per centum per annum*, or at such other rate as may from time to time be directed by the commissioners of her Majesty's Treasury; and no person by reason of his having made any payment of duty in advance, shall be prejudiced in his right to have any repayment of duty made to him to which he may become entitled under any of the provisions of this Act."

Power for commissioners to commute future duties.

Sect. 41. "It shall be lawful for the commissioners, in their discretion, upon application made by any person who shall be entitled to a succession in expectancy, to commute the duty presumptively payable in respect of such succession for a certain sum to be presently paid, and for assessing the amount which shall be so payable they shall cause a present value to be set upon such presumptive duty, regard being had to the contingencies affecting the liability to such duty, and the interest of money involved in such calculation being reckoned at the rate for the time being allowed by the commissioners in respect of duties paid in advance; and upon the receipt of such certain sum they shall give discharges to the successor accordingly" (*e*).

L. R. 7 H. L. 1. See Le Marchant *v.* Commissioners of Inland Revenue, L. R. 10 Ex. 292; 1 Ex. D. 185. *Contra*, Atty.-Gen. *v.* Sibthorp, 3 H. & N. 424.

But now by sect. 10 (1) of the Customs and Inland Revenue Act, 1889 (52 & 53 Vict. c. 7), it is provided that the allowance under this section 38 shall only be made in respect of property which the successor may have acquired by a title not conferring a succession on him, and which passes from the successor to some other person.

(*e*) By sect. 11 of the Customs and

[*1469]

*Sect. 42. "The duty imposed by this Act shall be a first charge on the interest of the successor, and of all persons claiming in his right, in all the real property in respect whereof such duty shall be assessed; and such duty shall also be a first charge on the interest of the successor in the personal property in respect whereof the same shall be assessed, while the same shall remain in the ownership or control of the successor, or of any trustee for him, or of his guardian or committee, or tutor or curator, or of the husband of any wife who shall be the successor; and the said duty shall be a debt due to the crown from the successor, having, in the case of real property comprised in any succession, priority over all charges and interests created by him, but such duty shall not charge or affect any other real property of the successor than the property comprised in such succession: provided that where any settled real property comprised in a succession shall be subject to any power of sale, exchange, or partition, exercisable with the consent of the successor, or by the successor with the consent of another person, he shall not be disqualified by the charge of duty on his succession from effectually authorizing by his consent the exercise of such power, or exercising any power with proper consent, as the case may be, and in such case the duty shall be charged substitutively upon the successor's interest in all real property acquired in substitution for the real property before comprised in the succession, and in the meantime upon his interest also in all moneys arising from the exercise of any such power, and in all investments of such moneys" (*f*).

16 & 17 Vict. c. 51.

Duty to be a first charge on property.

Inland Revenue Act, 1880 (43 Vict. c. 14), it is provided that: Where any legacy duty or succession duty shall be presumptively payable in respect of any interest in expectancy upon the determination of a life or other temporary interest in possession in a legacy or residue, or in personal property comprised in a succession, and the duty (if any) payable upon the life or other temporary interest should have been fully paid and satisfied, it shall be lawful for the Commissioners of Inland Revenue, in their discretion, upon the application of the executor or trustee, or other person who would be accountable for the duty in respect of such interest in expectancy, if it were then in possession, to commute the duty presumptively payable for a certain sum to be presently paid. For assessing the amount which shall be so payable the Commissioners shall cause a present value to be set upon the presumptive duty, regard being had to any contingencies affecting the liability to such duty, and the interest of money involved in the calculation being reckoned at the rate for the time being allowed by the Commissioners in respect of duties paid in advance under the Succession Duty Act, 1853. Upon the receipt of the certain sum the Commissioners shall give a discharge for the duty accordingly.

(*f*) The operation of the 42nd section of the Succession Duty Act on an exer-

*Sect. 43. "The commissioners shall, at the request of any successor, or any person claiming in his right, accept or cause to be made so many separate assessments of the duty payable in respect of the interest of the successor in any separate properties, or in defined portions of the same property, as shall be reasonably required; and in such cases the respective properties shall be chargeable only with the amount of duty separately assessed in respect thereof: and it shall be lawful also for the commissioners, by their certificates, to be issued in such form as they shall think fit, from time to time to declare that any duties already assessed, whether collectively or distributively, in respect of any succession, shall thenceforth be charged, as to any unpaid installments, according to any further distribution thereof, upon separate parts only of the property in respect of which such assessment shall have been made, in which case the charge of such duties shall be henceforth limited according to such further distribution."

16 & 17 Vict. c. 51.

Provision for the separate assessments of properties.

Sect. 44. "The following persons, besides the successor, shall be personally accountable to her Majesty for the duty payable in respect of any succession, but to the extent only of the property or funds actually received or disposed of by them respectively after the time appointed for the commencement of this Act; that is to say, every trustee, guardian, committee, tutor or curator, or husband in whom respectively any property, or the management of any property, subject to such duty, shall be vested, and every person in whom the same shall be vested by alienation or other derivative title at the time of the succession becoming an interest in possession; and all such trustees, guardians, committees, tutors, curators, husbands, and persons shall be authorized to compound or pay in advance or commute any duty, and retain out of the property subject to any such duty the amount thereof, or to raise such amount, and the expenses incident thereto, at interest on the security of such property, with power to give effectual discharges for the same, and

What persons accountable for duty.

cise of a power of sale is to shift the duty to the purchase-money or its investments: Dugdale *v.* Meadows, L. R. 6 Ch. 501. And the operation of the section is the same where the sale is under the powers conferred by the 22nd section of the Settled Estates Act, 1877: Re Warner's Settled Estates, 17 C. D. 711.

Where a testator had entered into a covenant to pay a sum of money to the trustees of the marriage settlement free from all deductions, the trustees of the settlement and not the executors are liable for succession duty. Re Higgins, 31 C. D. 142.

But now as to limitation of time for recovering succession duty, see *post*, p. *1515.

[*1471]

such security shall have priority over any charge or incumbrance created by the *successor; and in the event of the non-payment of such duty as aforesaid every person hereby made accountable shall be a debtor to her Majesty in the amount of the unpaid duty for which he shall be so accountable" (*g*).

16 & 17 Vict. c. 51.

Sect. 45. "The persons hereby made accountable for the payment of duty in respect of any succession, or some of them, shall, in the case of personal property, at the time of the first payment, delivery, retainer, satisfaction, or other discharge of the same or any part thereof to or for the successor or any person in his right, and in the case of real property when any duty in respect thereof shall first become payable, give notice to the commissioners or to their officers of their liability to such duty, and shall at the same time deliver to the commissioners or to their officers a full and true account of the property for the duty whereon they shall respectively be accountable, and of the value thereof, and of the deductions claimed by them, together with the names of the successor and predecessor, and their relation to each other, and all such other particulars as shall be necessary or proper for enabling the commissioners fully and correctly to ascertain the duties due; and the commissioners, if satisfied with such account and estimate as originally delivered, or with any amendments that may be made therein upon their requisition, may assess the succession duty on the footing of such account and estimate; but it shall be lawful for the commissioners, if dissatisfied with such account and estimate, to cause an account and estimate to be taken by any person or persons to be appointed by themselves for that purpose, and to assess the duty on the footing of such last-mentioned account and estimate, subject to appeal, as hereinafter provided; and if the duty so assessed shall exceed the duty assessable according to the return made to the commissioners, and with which they shall have been dissatisfied, *and if there shall be no appeal against such assessment, then it shall be in the discretion of the commissioners, having regard to the merits of each case, to charge the whole or any part of the expenses incident to the taking of such last-mentioned account and estimate on the interest of the successor, in respect whereof the duty shall be due, in increase of such duty, and to recover the same

Notice of succession to be given to the commissioners and a return of the property made.

16 & 17 Vict. c. 51.

(*g*) The executor paying a debt is not accountable as a trustee within the meaning of this section, Re Higgins, 31 C. D. 142; 29 C. D. 697. As to the liability of an executor paying a legacy under sect. 6 of 36 Geo. III. c. 52, see *ante*, p. *1411.

forthwith accordingly; and if there shall be an appeal against such last-mentioned assessment, then the payment of such expenses shall be in the discretion of the court of appeal hereinafter appointed" (*h*).

Penalty on not giving notices of succession, and on not paying duty when ascertained.

Sect. 46. "If any person required to give any such notice or deliver such account as aforesaid shall willfully neglect to do so at the prescribed period, he shall be liable to pay to her Majesty a sum equal to ten pounds *per centum* upon the amount of duty payable by him, or in the case of a succession chargeable with a higher rate of duty than one pound *per centum* upon the value thereof, upon such less sum as such duty, if assessable at the rate of one pound *per centum* upon the value of the succession, would amount to, and a like penalty for every month after the first month during which such neglect shall continue; and if any person liable under this Act to pay any duty shall, after such duty shall have been finally ascertained, willfully neglect to do so within twenty-one days, he shall also be liable to pay to her Majesty a sum equal to ten pounds *per centum* upon the amount of duty so unpaid, or upon such less sum as such duty, if assessable at the rate of one pound *per centum* on the value of the succession, would amount to, and a like penalty for every month after the first month during which such neglect shall continue."

16 & 17 Vict. c. 51.

Accounting party to verify his account by production of books and documents, and commissioners may, without fee, inspect and take copies of public books.

Sect. 49. "Every person who under the provisions of this Act may deliver any account or estimate of the property *comprised in any succession shall, if required by the commissioners, produce before them such books and documents in the custody or control of such person, so far as the same relate to such account or estimate, as may be capable of affording any necessary information for the purpose of ascertaining such property and the duty payable thereon: and the commissioners may, without payment of any fee, inspect and take copies of any public book; but all such information shall be deemed to be confidential, and the commissioners shall not disclose the same, or the contents of any document or book, to any person, otherwise than for the purposes of this Act."

Power for accountable party to appeal.

Sect. 50. "It shall be lawful for any accountable party, dissatisfied with the assessment of the commissioners, upon giving, within twenty-one days after the date of such assessment, notice in writing to the commissioners of his

(*h*) By 52 & 53 Vict. c. 7, s. 10 (3), it is provided that if the commissioners are dissatisfied with an account and estimate delivered under this section they may, subject to appeal, assess the duty or proceed as this section directs.

[*1474]

intention to appeal against such assessment, and a statement of the grounds of such appeal, such statement to be furnished within the further period of thirty days, to appeal by petition accordingly to her Majesty's Court of Exchequer in England (*hh*), Scotland, or Ireland, according to the place in which the appellant shall be resident; and every such Court, or any judge thereof sitting in chambers, shall have jurisdiction to hear and determine the matter of such appeal and the costs thereof, with power to direct, for the purposes of such appeal, any inquiry, valuation, or report to be made by any officer of the Court, or other person, as such Court or judge may think fit: Provided, that where the sum in dispute in respect to duty on such assessment does not exceed fifty pounds, the accountable party may, having given notice of appeal and delivered a statement of the grounds thereof as hereinbefore directed, appeal to the judge of the County Court in England, the Sheriff Court in Scotland, or the Assistant Barrister's Court in Ireland, for the district, *county, or division in which the appellant shall be resident, or the property be situate; and every such judge shall have jurisdiction to hear and determine the matter of such last-mentioned appeal, with the like power and authority as are by this section given to a judge of her Majesty's Court of Exchequer" (*i*).

16 & 17 Vict. c. 51.

Sect. 51. "Whenever any payment of duty shall be made under this Act, the same shall be entered in a book to be kept by the commissioners for this purpose, and the receiver-general of inland revenue or other proper officer appointed by the commissioners, shall give a receipt for the same in such form as they shall think fit, and stamped with the proper stamp for denoting the rate of duty, and the commissioners shall from time to time deliver to any person interested in any property affected by such duty, on applying for the same for any reasonable purpose approved by the commissioners, a certificate in such form as they may think fit, of such payment" (*k*).

Duty to be entered by the commissioners in a book, and a stamped receipt to be given.

Sect. 52. "Every receipt and certificate purporting to be in dis-

(*hh*) Now to the Queen's Bench Division of the High Court of Justice, by virtue of Judicature Act, 1873, s. 15, and the Order in Council of December 16, 1880.

(*i*) An appeal is given from the decision of the court or judge to the Exchequer Chamber, and then to the House of Lords, by stat. 28 & 29 Vict. c. 104, s. 59. Now by the Judicature Act, 1873, s. 18, sub-s. 4, the jurisdiction of the Court of Exchequer Chamber has been transferred to the Court of Appeal.

(*k*) See Earl Howe *v.* Earl of Lichfield, L. R. 1 Eq. 641. L. R. 2 Ch. 155.

[*1475]

charge of the whole duty payable for the time being in respect of any succession or any part thereof shall exonerate a *bona fide* purchaser for valuable consideration, and without notice, from such duty, notwithstanding any suppression or misstatement in the amount upon the footing whereof the same may have been assessed, or any insufficiency of such assessment; and no *bona fide* purchaser of property for valuable consideration under a title not appearing to confer a succession shall be subject to any duty with which such property may be chargeable under the provisions of this Act, by reason of any extrinsic circumstances of which he shall not have had notice at the time of such purchase."

Protection to *bona fide* purchasers.

*Sect. 53. "Whenever any suit shall be pending in any Court for the administration of any property chargeable with duty under this Act, or the Legacy Duty Acts, such Court shall provide, out of any property which may be in the possession or control of the Court, for the payment of duty to the commissioners."

16 & 17 Vict. c. 51.

Courts in suits for the administration of property to provide for payment of duty.

Sect. 54. "This Act shall be taken to have come into operation on the 19th day of May, 1853, and shall take effect accordingly."

Commencement of Act.

Short title.

Sect. 55. "This Act may be cited for all purposes as 'The Succession Duty Act, 1853.'"

By stat. 28 & 29 Vict. c. 104, sections 47 & 48 of the 16 & 17 Vict. c. 51 (Succession Duty Act), sections 12, 13, 14, and 15 of 22 & 23 Vict. c. 21, and the 1st section of the stat. 24 & 25 Vict. c. 92, are repealed, and by sect. 55 it is enacted, "If any person accountable and chargeable with duty under the Succession Duty Act or the Legacy Duty Acts required by the commissioners of inland revenue to deliver an account under those Acts or any of them makes default in doing so, the commissioners may sue out of the Court of Exchequer a writ of summons commanding him to deliver an account, and to pay the duty and the costs of the proceedings, or to show cause to the contrary, and on cause being shown, such order shall be made as seems just."

Stat. 28 & 29 Vict. c. 104, s. 55, for summary proceedings for account and payment of succession and legacy duty.

And by section 56, "where, in pursuance of the Succession Duty Act or the Legacy Duty Acts, the commissioners of inland revenue make an assessment of duty, and the duty is not paid, and there is no notice of appeal against the assessment under sect. 50 of the Succession Duty Act (*kk*), or of disputing the liability to assessment, the commis-

Sect. 56. Summary proceedings for payment of succession or legacy duty assessed.

(*kk*) *Ante*, p. *1474.

[*1476]

sioners may sue out of the Court of Exchequer a writ of summons commanding the person liable for the duty, or the owner of any property expressly charged therewith, to pay the duty payable by him and the cost of the proceedings, or to show cause to the contrary, and on cause being shown, such order shall be made as seems just."

*By sect. 58, in such proceedings the court may refer the matter to the proper officer for his report, and may therefore order a special case, and may give judgment thereon subject to proceedings in error.

16 & 17 Vict. c. 51. Sect. 58.

By sects. 59 and 60, in such proceedings by writ of summons an appeal is given to the Exchequer Chamber (*l*), and thence to the House of Lords.

Sects. 59, 60.

By stat. 52 & 53 Vict. c. 7, section 6, it is enacted that—

52 & 53 Vict. c. 7, s. 6.

Estate duty on successions.

(1.) "Where the value of any succession upon the death of any person dying on or after June 1, 1889, chargeable with duty under the Succession Duty Act, 1853 (*m*), and the Customs and Inland Revenue Act, 1888 (*n*), exceeds 10,000*l.*, and where the value of any succession to real property under the will or intestacy of any person so dying chargeable with duty under the said Act does not exceed 10,000*l.*, but such value together with the value of any other benefit taken by the successor under such will or intestacy exceeds 10,000*l.*, a separate statement of the value of the succession shall be delivered to the Commissioners of Inland Revenue together with the account to be delivered under section 45 (*o*) of the said Act."

(2.) "There shall be charged and paid on every statement to be delivered in conformity with this section, in respect of the value of the succession, a duty of 1*l.* for every full sum of 100*l.* and for any fraction of 100*l.* over any multiple of 100*l.* of such value."

(3.) Exempts leaseholds included in an account delivered according to section 38 of the Customs and Inland Revenue Act, 1881.

(*l*) Now by the Judicature Act, 1873, s. 18, sub-s. 4, the jurisdiction of the Court of Exchequer Chamber has been transferred to the Court of Appeal.

(*m*) 16 & 17 Vict. c. 51. See Atty.-Gen. *v.* Aberdare, [1892] 2 Q. B. 684.

(*n*) 51 Vict. c. 8.

(*o*) See *ante*, p. *1472.

52 & 53 Vict. c. 7, s. 6.

*(4.) Makes this duty additional (*p*).

(5.) "The value upon which the duty imposed by this section in respect of a succession to real property is to be charged and assessed shall be ascertained in accordance with the Succession Duty Act, 1853, subject to the following provisions:

"(*a*.) In the case of a successor who is entitled to the real property comprised in his succession for an estate in fee simple or in fee according to the custom of any manor or for lives renewable under any custom or under any lease for lives, or for any estate in tail or under an entail under which he can acquire the property in fee simple without consent of any person or is entitled to any such property for life and competent to dispose as he shall think fit of a continuing interest therein, the value shall be the principal value of such property based upon the annual value estimated after making such allowances (if any) as ought to be made under the said Act. The duty payable in respect of such principal value shall not in any case exceed the amount which would be chargeable upon an annuity equal to such annual value according to the highest value in Table III. in the Schedule of the Succession Duty Act, 1853;

"(*b*.) In the case of an increase of benefit accruing to a successor and chargeable to succession duty by reference to sections 5, 20, or 25, of the Succession Duty Act, 1853 (*q*), where the value of the succession apart from the increase of benefit shall exceed 10,000*l*., such increase of benefit shall be chargeable with duty under this section whatever may be the value thereof; and where the value of the succession, apart from the increase of benefit, shall not exceed 10,000*l*., the value of such increase of benefit, as well as of every preceding increase of benefit, shall be added to the value of the succession for the purpose of the said duty."

52 & 53 Vict. c. 7, s. 6.

*(6.) The duty imposed by this section shall in the case of real property be a first charge thereon or on the interest of the successor therein, according as the duty is or is not chargeable on the principal value of such property, and shall be paid in like manner as if the duty

(*p*) The effect of this sub-section is to incorporate into sub-section (1) the definition of the term "succession" contained in sect. 1 of the Succession Duty Act, 1853 (*ante*, p. *1446); Atty.-Gen. *v.* Aberdare, [1892] 2 Q. B. 684.

(*q*) *Ante*, pp. *1450, *1460, *1463.

were a part of the succession duty payable under section 22 of the Customs and Inland Revenue Act, 1888, and together with the payments in respect of that duty.

By section 7, the additional duty is not to be payable in respect of the value of the estate and effects of any person dying on or after June 1, 1896.

Duration of charge of estate duty.

By section 8, double duty or interest is payable in case of default.

Double duty or interest payable in case of default.

By section 9, the duties are to be stamp duties, and the required statements are to be in the prescribed form (*r*).

Duties to be stamp duties.

Having thus collected the principal statutory provisions now in force with respect to duties on legacies and successions, it remains to point out, more fully, the construction which has been put on these acts by the courts of law and equity: and for this purpose, it is proposed to consider, 1st, the amount of duties payable; 2ndly, on what subjects the duties are payable; 3rdly, by whom the duties are payable.

(*r*) "Estate duty" is a new duty. It is an additional duty upon large estates which pass in consequence of a death, not an additional property tax on large benefits which are received by individuals in consequence of a death. The intention of section 5 is to give the new duty whenever the whole estate of a testator exceeds 10,000*l*. without reference to the amount taken by any particular beneficiary. So also under section 6, the whole fund and not the interest in it of any individual successor is the "succession," the value of which is referred to in the words, "where the value of 'any succession' exceeds 10,000*l*."; but "succession" means any one succession, *i. e.*, estate duty is payable where the value of the one fund which passes upon the death of a predecessor, as the result of one disposition or devolution exceeds 10,000*l*. It does not mean that duty is payable wherever all the property whatsoever, which passes upon the death of the predecessor, is more than 10,000*l*. See Att.-Gen. *v.* Aberdare, [1892] 2 Q. B. 684, 690.

*CHAPTER THE FIRST.

AS TO THE AMOUNT OF DUTIES PAYABLE ON LEGACIES AND SUCCESSIONS.

What shall be considered a legacy paid.

It was formerly often material to ascertain under what circumstances a legacy might be said to be "paid, delivered, retained, satisfied or discharged," within the meaning of the statute.

But because of the length of time which has elapsed since the passing of 55 Geo. III. c. 184, a mere reference to the cases which have been decided on the meaning of the above words is considered sufficient (*a*). And further, it would seem that cases which formerly escaped duty on the construction put on the above words would now be hit by the Succession Duty Act, and therefore *quacunque via* duty would be paid.

Amount of duty payable in case of a legacy to husband and wife, where the one is a child of the testator, and the other a stranger.

Formerly, a question, with respect to the amount of the duties payable, arose in the instance of legacies given to a husband and wife for life, in a case where the one is of kin to the testator, so as to be within the lower scale of duties, and the other a stranger in blood, so as to be within the highest (*b*).

But by the 11th section of the Succession Duty Act it is provided in the case of legacies given to any married person by testators dying after May 19, 1853, as well as in case of successions under that act, that duty shall be paid at the lower rate if the husband or wife of such person would *have been chargeable on a lower scale had the legacy been given to him or her (*c*).

In what cases duty is payable on the interest as well as the principal of a legacy.

It may be remarked, that the acts do not specify any time at which the executor or administrator must render his final or residuary account at the stamp office; for the obvious reason, that the peculiar circumstances of the property of the deceased would, in many cases, preclude the possibility of complying with any such restriction: But the duty must be

(*a*) Atty.-Gen. *v.* Manners, 1 Price 411; Atty.-Gen. *v.* Wood, 2 Y. & J. 290; Hill *v.* Atkinson, 2 Meriv. 45; Coombe *v.* Trist, 1 My. & Cr. 69; Atty.-Gen. *v.* Hancock, 2 M. & W. 563; Atty.-Gen. *v.* Loscombe, 5 H. & N. 564.

(*b*) Atty.-Gen. *v.* Bacchus, 9 Price 30; Atty.-Gen. *v.* Burnie, 3 Y. & J. 531.

(*c*) See *ante*, p. *1454.

paid on the accruing profits and income of the effects of the deceased, from the time of his death to that of delivering the account and offering to pay the duty at the stamp office (*d*). In The Attorney-General *v.* Cavendish (*e*), Lord F. Cavendish died in October, 1803, and on the 20th of July, 1808, the defendant, as executor and residuary legatee, delivered in his residuary account of the testator's personal estate intended to be retained by him, and offered to pay the duty on the residuary estate, exclusive of the interest which had accrued since the testator's decease, 324*l.* less than it would have been had the duty been computed on the interest accrued : And it was decided that the duty was payable on the interest accrued from the death up to the time of the delivering of the account.

So in Thomas *v.* Montgomery (*f*), it was holden, that when a legacy is not paid at the time appointed by the testator, legacy duty is payable, not merely on the capital sum bequeathed, but on the aggregate amount of capital and interest, which is ultimately received by the legatee (*g*).

But it was holden by the Court of Exchequer, in The Attorney-General *v.* Holbrook (*h*), that where by a will a specific debt is forgiven, which is known and ascertained at the time of the testator's death, legacy duty is not payable upon the interest accruing in respect of such debt, between the time of such death and the period when the executors close their accounts.

(*d*) 1 Rop. Leg. 787, 3rd edit.

(*e*) Wightw. 82.

(*f*) 3. Russ. Chanc. Cas. 582.

(*g*) See also *Accord.* Bate *v.* Payne, 13 Q. B. 900, as to profits accruing on leaseholds.

(*h*) 3 Younge & Jerv. 114.

*CHAPTER THE SECOND.

UPON WHAT SUBJECTS THE DUTIES ARE PAYABLE.

What are to be regarded as legacies payable out of personalty.

It has appeared that legacies of every description, given by will or other testamentary instrument (*a*), payable out of personal estate, including donations *mortis causa* (*b*), and whether given by way of annuity or otherwise (*c*), and also legacies given subject to contingencies (*d*), are liable to the duties imposed by the statute 55 Geo. III. c. 184.

Leaseholds.

As to leaseholds, the Succession Duty Act (s. 19) provides that after May 19, 1853, they shall not be chargeable with legacy duty, but shall be included in the term "real property," and, as such, be liable to succession duty (*e*).

There has already been occasion to consider generally what instruments are to be regarded as testamentary (*f*). But it may be proper to inquire more particularly into the question with reference to the legacy duty.

What is a testamentary instrument:

In The Attorney-General *v.* Jones (*g*), a man conveyed by deed, for a nominal consideration, his leasehold and personal property to trustees, for the use of himself for life, and several persons therein named at his death, with a power reserved of revocation or alteration of the trusts: He never parted with the deed, or with any part of the property during his life; and he confirmed, in most respects, such disposition of it by will at his death: And it was holden by the Court of Exchequer (Wood, B., *dissentiente*), that the two instruments *should be considered as to be taken and construed together as testamentary instruments, and that the property passing under them should pass as legacies, and be subject to duty.

This decision was questioned in subsequent cases, but the question of its propriety has ceased to be of any practical importance since

(*a*) *Ante*, p. *1405.
(*b*) *Ante*, pp. *1413, *1443.
(*c*) *Ante*, pp. *1408, *1413, *1443.
(*d*) *Ante*, p. *1420.
(*e*) *Ante*, p. *1459.
(*f*) See *ante*, pp. *93–*97. See also Gaskell *v.* Gaskell, 2 Y. & J. 502; and the remarks by Wood, V.-C., on that case, 4 K. & J. 214, 215.
(*g*) 3 Price 368.

cases of this kind, which occur after May 19, 1853, will fall within the operation of the 8th section of the Succession Duty Act (*h*).

In Woodbridge *v.* Spooner (*i*), where the deceased, in her lifetime, gave to the plaintiff a promissory note to pay him or order "on demand the sum of 100*l.* for value received and his kindness to me," with a verbal engagement on the part of the plaintiff, that the note should not be demanded until after her death, it was holden by the Court of King's Bench, that parol evidence could not be received to show that it was not given for a valuable consideration: and that such a note did not operate by way of testamentary disposition: nor was it void on the ground that it was a fraud on the legacy duty, that duty never having attached upon it, and there being nothing to show that the amount passed by way of a *donatio mortis causa* (*k*).

With respect to the suggestion of fraud on the legacy duty, it was said by Lord Lyndhurst in Re Evans (*l*), that every subject has a right so to shape the disposition of his property as to avoid the legacy duty, if possible, and that there is no fraud in so doing, but now to cases of this kind also, which occur after the Succession Duty Act *has come into operation, the 8th section of that statute appears to have been intended to apply (*m*).

money taken under a testamentary appointment by virtue of a power:

The duties imposed by the legacy acts are payable, not only upon a legacy payable out of the personal estate, strictly considered of the testator, but of any personal estate which the testator had the power of disposing of, as he or she might think proper: Thus in Re Cholmondeley (*n*), by the marriage settlement of Mrs. Cholmondeley, 20,000*l.* was vested in trustees, upon trust to pay the dividends to Sir Philip Francis for life, and after his death to Mr. Cholmondeley for his life, with remainder to Mrs. Cholmondeley for her life, and with a power of appointment amongst her children, in case there should be any; and,

(*h*) *Ante*, p. *1452.

(*i*) 1 Chitt. Rep. 661. S. C. 3 Barn. & Ald. 233.

(*k*) But in a case which occurred after the Wills' Act, where among the testator's papers two letters were found, sealed and directed "For Sarah Gough, my late servant," each containing a promissory note signed by him, and one of the letters stated that the deceased inclosed 200*l.* as a mark of respect, and the other, that the inclosed was for her long and faithful services, it was held that the notes were, in effect, invalid testamentary instruments and void: Gough *v.* Findon, 7 Exch. 48.

(*l*) 2 Cr. M. & R. 221. See also Farquharson *v.* Cave, 2 Coll. 366; Vandenberg *v.* Palmer, 4 K. & J. 215.

(*m*) See *ante*, p. *1452, and p. *1443, note (*q*).

(*n*) 1 Crompt. & Mees. 149. S. C. 3 Tyrwh. 10.

[*1482]

in default of issue, to such persons as she should by will appoint, in case she died in her husband's lifetime, or by deed or will, in case she should survive her husband; and in default of appointment, amongst her next of kin; Mrs. Cholmondeley died in her husband's lifetime, having, by her will, appointed this sum of 20,000*l.* to certain persons mentioned in her will: And the Court of Exchequer held, that legacy duty was payable on the 20,000*l.*: The barons were of opinion that, taking together all the acts, applicable to the same subject, and passed *in pari materia*, and the legislature in the 36 Geo. III. (*o*), and the 45 Geo. III. (*p*), having described and defined what they meant by a legacy, it was impossible to come to a conclusion that they meant to use that term in a more limited sense in the statute of 53 Geo. III.

In Platt *v.* Routh (*q*), John Ramsden, by his will dated the 10th of March, 1825, after giving various legacies, and directing his real estates to be sold and converted into personalty, gave the general residue of his personal estate to his daughter Judith Ann Platt, and three other persons, his *executrix and executors, upon trust to permit his said daughter to receive the interest and dividends thereof during her life, and after her death (subject to certain payments then to be made) upon trust for such person or persons, *other than and except Joseph Woodhead and his relations, Moses Hoper and his relations, and the relations of the late husband of his said daughter and every of them*, in such parts, shares, and proportions, and in such manner and form as the said Judith A. Platt, whether sole or covert, should by will appoint, and in default of appointment, in trust for the next of kin of Dyson Ramsden; and the testator declared, that in case his said daughter should intermarry with the said Joseph Woodhead or any of his relations, or should reside with or receive visits from him or them, then the bequest in her favor should utterly cease: The testator died in May, 1825 and his will was duly proved by his executrix and executors: After his death, the said Judith A. Platt married George E. Platt, and the interest and dividends of the testator's residuary estate (which was very considerable), were regularly paid to her until her death, on the 7th of September, 1837: In April, 1837, she made a will, and thereby, in exercise of the power under her father's will, she gave 10,000*l.* consols to the descendants of the before-named Dyson Ramsden, and all the rest of her late father's property to

(*o*) See *ante*, pp. *1412, *1413.

(*p*) See *ante*, p. *1440. See also stat. 8 & 9 Vict. c. 76, s. 4, *ante*, pp. *1442, *1443.

(*q*) 6 Mees. & W. 756.

[*1483]

various persons, strangers in blood both to her father and herself: By order of the master of the rolls, a case was stated for the opinion of the Barons of the Exchequer, as well as to the liability of Judith A. Platt's will to the probate duty (*r*), as also as to the legacy duty payable in respect to the bequests contained in the two wills: Their lordships thought that the question, so far as regarded the legacy duty, depended entirely upon the construction to be put upon the 18th section of the 36 Geo. III. c. 52 (*s*), which regulates the duty in cases where legacies are given subject to power of appointment; and *they were of opinion, that the power under consideration must be treated as a general and absolute power within the meaning of that section: The barons were also of opinion, that according to the true construction of the 7th section of the same statute (*t*), the property subject to the power was personal estate, which Judith A. Platt had power to dispose of as she should think fit: Their lordships accordingly certified to the master of the rolls their opinion, that, on the death of Judith Ann Platt, a duty of one per cent. became payable in respect of the bequest in the will of John Ramsden of the residue of his estate and effects to the said Judith Ann Platt, after allowing any duty already paid in respect thereof: And, also, their further opinion, that legacy duty was payable in respect of the bequest contained in the will of the said Judith Ann Platt, at the same rate at which it would have been payable, if they had been mere legacies given by her, payable out of her own personal estate. This opinion of the barons was afterward affirmed by the decree of Lord Langdale (*u*), and finally by the decision of the House of Lords (*x*).

In The Attorney-General *v.* Brackenbury (*y*), it was held that where the residuary legatees were the persons who would have been entitled in default of appointment, if the donee of the power had exercised it by charging in the first instance his residuary estate with his debts and legacies, it is not competent for the residuary legatees to disclaim the fund under the appointment and elect to take under the gift to them in the original instrument, so as to be chargeable only with a lower rate of duty.

In The Attorney-General *v.* Pickard (*z*), a testator devised real

(*r*) See *ante*, p. *550 (*c*).

(*s*) *Ante*, p. *1421.

(*t*) *Ante*, p. *1412. See also stat. 8 & 9 Vict. c. 76, s. 4, *ante*, pp. *1442, *1443.

(*u*) 3 Beav. 257.

(*x*) 10 Cl. & F. 257.

(*y*) 1 Hurlst. & C. 782.

(*z*) 3 Mees. & Wels. 552.

estates to William Trenchard for life, with remainder to his first and other sons in tail, with remainder to Thomas Pickard for life, remainder to his first and other sons in tail, *remainder to George Pickard for life, with remainders over, and gave a power to the several persons who, by virtue of the limitations in the will, should be in actual possession of the estates by deed or will, to appoint to any woman or women they should marry, by way of jointure, rent-charges not exceeding 750*l.* per annum for life, to be issuing out of and chargeable upon the devised estates, clear of all taxes, and deductions whatsoever: William Trenchard died without issue, and Thomas Pickard entered into possession of the estates, and by his will, charged them with 750*l.* per annum by way of jointure to his wife under the power, and died without issue male: whereupon George Pickard entered into possession: And the Barons of the Exchequer held, that George Pickard was chargeable (under 45 Geo. III. c. 28, s. 5, *ante*, p. *1441) with legacy duty after the rate of 10*l.* per cent. on the value of the rent-charge of 750*l.* per annum; their lordships being of opinion, that the annuity in question, being a legacy, was charged upon the real estates by the will which created the power to charge, in like manner as if the person, to whom it was given by the execution of the power, had been mentioned by name as the object of the testator's bounty in the will which gave the power. And this decision was afterward affirmed in the Exchequer Chamber (*a*).

legacy charged on land by the execution of a power created *by will*:

This case was followed by that of The Attorney-General *v.* Henniker (*b*), in which it was held by the same court to make no difference that by the husband's appointment of the annuity by way of jointure it was given to the wife on condition that she should relinquish her right to dower (*d*).

In giving the judgment of the Court of Exchequer Chamber in the case of The Attorney-General *v.* Pickard, *Lord Denman intimated his opinion, that charges of this nature would be exempt, if originally made by deed, under the proviso contained in stat. 45 Geo. III. c. 28, s. 4 (*e*). And this opinion was subsequently acted upon by the Court of Exchequer

by the execution of a power created *by deed*:

(*a*) 6 Mees. & Wels. 438.

(*b*) 7 Exch. 331.

(*d*) See also *Accord.* Sweeting *v.* Sweeting, 1 Drew. 331. The barons doubted whether, if this condition had been annexed by the original testator himself, the duty would have been payable on the whole annuity, or on the amount of it after deducting the value of the dower. But in Sweeting *v.* Sweeting, Kindersley, V.-C., was of opinion there is no ground for any such doubt.

(*e*) See *ante*, p. *1440

in The Attorney-General *v.* Lord Hertford (*f*). There A., by deed, dated in 1802, conveyed certain lands to trustees, to the use of himself for life, remainder to B., his son, for life, with remainders over: The deed contained a proviso, that it should be lawful for B., by his last will, to limit and appoint to the use of himself, or any other person or persons, any annual sum or sums of money, not exceeding the yearly sum of 700*l.* to be charged upon and payable out of the lands included in the deed, to commence from the death of B., and to be either perpetual or in fee, or payable for such times and in such manner in all respects as B. should think fit: B., by his will, by virtue of this power, appointed an annuity of 700*l.* a year to C. for her life, charged upon and payable out of the said land: And it was held by the Court of Exchequer, that legacy duty was not payable in respect of such annuity.

This decision occasioned the passing of the stat. 8 & 9 Vict. c. 76 (*g*), which contains a wider definition of a legacy, and a narrower proviso, than that contained in the statute of 45 Geo. III. And legacy duty has since become chargeable on every disposition by will, under a power, of money which is payable out of real estate, or a charge thereon, whether the power was created by deed or will: And it has also been held that the statute is retrospective, so that the duty is chargeable on money paid after the act came into operation, notwithstanding the testator died before (*h*).

It will be seen that in the act of Victoria, the proviso at *the end of the clause confines the exemption from duty to money which, by marriage settlement, is subjected to any limited power of appointment to or for the benefit of persons specially named or described therein as the objects of the power, or their issue. And even this exemption has been practically repealed by the Succession Duty Act (*i*).

Duties on legacies, &c. out of, or charged on, real estate:

It has appeared (*k*), that legacies of every description of the value of 20*l.* or upward, given out of or charged upon real or heritable estate (*l*), or out of any moneys to arise by sale, mortgage or other disposition of real or heritable estate, or any part thereof, and also the clear residue, when given to

(*f*) 14 Mees. & Wels. 284.

(*g*) *Ante*, p. *1442. See Trevor on Taxes of Sucession, p. 104, 105.

(*h*) Atty.-Gen. *v.* Lord Hertford, 8 Exch. 670. As to the duties now payable on legacies charged on or payable out of realty, see *infra*.

(*i*) See Trevor on Taxes of Succession, 187.

(*k*) *Ante*, pp. *1405, *1406.

(*l*) No legacy duty is payable on the value of personal estate given up by one legatee to another under the doctrine of election (*ante*, p. *1304 *et seq.*):

[*1487]

one person, and every share of the clear residue, (when given to two or more persons,) of the moneys to arise from the sale, mortgage, or other disposition of any real or heritable estate *directed to be sold*, mortgaged or otherwise disposed of, by any will or testamentary instrument, where such residue or share shall amount to 20*l.* or upward, are subjected to the stamp duties (*m*). With respect to the *construction of this part of the statute of the 55 Geo. III. c. 184, the Court of Exchequer, in Re Evans (*n*), decided that where there is a bequest of real property to trustees and a discretion given to them to sell or not to sell, as they shall think best for the *cestuis que trust*, the duty does not attach, notwithstanding the trustees shall have exercised their discretion by an actual sale; for that a sale made under a *discretion* given to trustees to sell and distribute the proceeds, but without any positive direction imposing on them the obligation of selling, is not to be considered a sale *directed* by the testator, within the meaning of the statute. This case has been regarded by the Court of Exchequer as overruled by the cases of The Atty.-General *v.* Mangles (*o*), and the Atty.-General *v.* Simcox (*p*), and it was considered to be fully established that *if an actual sale* takes place, the proceeds are liable to duty, whether the sale is made by the trustees under an absolute direction given to the trustees to sell at all events, or under a direction given to them to sell in case they shall deem it expedient to do so (*q*). However, a contrary doctrine

Land directed to be sold:

But when the testator devises his own real estate to A., and bequeaths A.'s personal estate to B., the legacy duty is payable on the value of the personal estate so charged on the testator's real estate: Laurie *v.* Clutton, 15 Beav. 131. Where, however, a testator died in 1811, having devised lands to his nieces as tenants in common in fee, with a proviso that if his nephew should transfer 10,000*l.* consols into the names of trustees for the benefit of the nieces, the lands should enure to the use of the nephew, and the nephew in the course of the following year having exercised his option, and transferred the consols, it was held, in The Attorney-General *v.* Wyndham, 1 Hurl. & C. 571, that the defendant, the executor of the last surviving trustee, was liable to pay duty on the 10,000*l.* consols at the rate of two and a half per cent.; for that the money arose by a "disposition" of the testator's real estate, within the meaning of the stat. 48 Geo. 3, c. 149, sect. 2. See *ante*, p. *1442.

(*m*) See also stat. 45 Geo. 3, c. 28, *ante*, p. *1440, and stat. 8 & 9 Vict. c. 76, s. 4, *ante*, p. *1442. But now by sect. 21 (2) of 51 & 52 Vict. c. 8, it is enacted that legacies payable out of or charged upon real estate or the proceeds thereof are not to be chargeable with legacy duty but with succession duty.

(*n*) 2 Cr. M. & R. 206.

(*o*) 5 M. & W. 120.

(*p*) 1 Exch. 749.

(*q*) See 1 Exch. 765, 766, 768, Atty.-Gen. *v.* Metcalfe, 6 Exch. 43 by Parke, B.

[*1488]

seems to have been maintained in the case of The Advocate-General *v.* Smith (*r*), in the House of Lords, where Lord St. Leonards said he thought the case of In re Evans had been rightly decided, and he denied that it had ever been overruled. It has also been held, that if a real estate is sold under the general power of the Court of Chancery to direct a sale for satisfying charges, no legacy duty is payable, although the will contains a discretionary power to trustees to sell (*s*).

Again, where the trustees have a discretion to sell or not to sell, *and they think fit not to sell*, the legacy duty does not *attach (*t*). And consequently, in every will of this kind, where *no actual sale* takes place, a question of construction arises, *viz.*, whether, taking the will altogether, there is a *direction* to the trustees to convert the estate into money; or whether it is really left in their *discretion*, not to convert it into money, but to leave it as land. The words of discretion may be so controlled as to show that they are only in semblance words of discretion, and in reality words of direction (*u*); and if they are of the latter description, the legacy duty will attach under the act, notwithstanding the *cestui que trust* in fact takes the property in *statu quo*, and the trustees do not convert it into money by sale, according to the directions of the will, there being no claim to render such sale necessary (*x*).

If a testator devises real estate to trustees with directions to sell it, and invest the money arising from such sale in the purchase of other real estate, no duty is payable, though the estate be sold, and the proceeds paid to the person entitled to the estate to be bought (*y*).

Tolls.

It was held by Lord Cottenham in The Attorney-General *v.* Jones (*z*), that the profits arising from the tolls of a lighthouse are real estate, and not subject to legacy duty.

These and similar questions have obviously lost their importance since the Succession Duty Act has taxed all real estate equally with personalty.

(*r*) 1 Macq. H. of L. 760.

(*s*) Hobson *v.* Neale, 8 Exch. 368. 17 Beav. 178. *Secus*, where the sale is ordered by the court, in consequence of the directions in testator's will: Harding *v.* Harding, 2 Giff. 597.

(*t*) Atty.-Gen. *v.* Mangles, 5 M. & W. 120.

(*u*) Advocate-General *v.* Ramsay's Trustees, 2 Cr. M. & R. 224, note (*a*).

(*x*) Atty.-Gen. *v.* Holford, 1 Price 426. Williamson *v.* Advocate-General, 10 Cl. & F. 1 *Accord.*

(*y*) Mules *v.* Jennings, 8 Exch. 830. Heal *v.* Knight, 8 Exch. 839, note (*a*).

(*z*) 1 Mac. & G. 574.

[*1489]

Duty on a bequest of rent-charge, annuity, &c., &c.

In The Attorney-General *v.* Jackson (*a*), the testator, Samuel Jackson, gave a life estate in his freehold property to Charlotte Troughton, and after her death, and in the event of her husband, Joseph Troughton, surviving her, he *gave him "one annuity or yearly rent-charge" of 500*l.* a year, payable quarterly, out of his real estate, with a landlord's power of distress and entry, and subject to that annuity, he gave his real estate in moieties to Randle Jackson and William Jackson, Randle Jackson having an estate in fee, and William Jackson an estate for life: The question was, whether the annuity of 500*l.* a year, thus given to Joseph Troughton, was to be considered a legacy within the meaning of the acts of parliament imposing duties on legacies: It was contended, on behalf of the defendants, that the subject-matter was in fact real property; that it was a rent-charge, *i. e.*, a freehold interest in the party in whose favor it was granted; that it was as much so, as far as related to the 500*l.* per annum, as the estate out of which it issued; and that it was not the intention of the legislature, in imposing the legacy duties, to impose any duty whatever upon real property: But the Court of Exchequer held, that the annuity in question fell precisely within the terms made use of by the legislature in the stat. 55 Geo. III. c. 184, with respect to gift by way of annuity, *viz.*, "all gifts of annuities, or by way of annuity, or of any partial interest or benefit, out of any such estate or effects as aforesaid" (*b*), and was therefore liable to the duty (*c*).

But in Shirley *v.* Lord Ferrers (*d*), a testator devised certain estates to the use of trustees for the term of 500 years, and subject thereto, to the use of other trustees, to preserve contingent remainders, with remainder to the first and other sons of C. S. (then an infant), with divers remainders over, and he directed that the trustees of the term should, after paying certain annuities, apply so much of the rents and profits of the estate as they should think fit (not exceeding in any one year a certain amount), in aid of another fund, *to the maintenance and education of C. S., until she should attain twenty-one or marry, and that they should accumulate the surplus rents and profits for the benefit of C. S. when she should attain twenty-one or marry, and if she died under twenty-one and unmarried, then for the benefit of the parties entitled under the subsequent limitations of the estates,

(*a*) 2 Crompt. & Jerv. 101.

(*b*) *Ante*, p. *1408.

(*c*) See also Stow *v.* Davenport, 5 B. & Adol. 359. 2 Nev. & M. 805, in which case the Court of K. B. recognized and acted on this decision.

(*d*) 1 Phill. Ch. C. 167.

[*1490] [*1491]

and that upon her attaining twenty-one or marrying, they should during her lifetime, pay the surplus rents, after paying the annuities, to her for her separate use: It was contended, on behalf of the crown, that the trust for maintenance amounted to "a gift by way of annuity," or "to a partial interest or benefit": But it was held, by Lord Lyndhurst that the sums annually applied out of the rents and profits, under the trusts of the term, to the maintenance and education of C. S. until her marriage, were not liable to legacy duty (*e*): And his Lordship expressed his opinion, that nothing but what is a charge upon the estate of another person is within the act (*f*).

Duty on legacies to be laid out in land.

Legacies of personal estate to be laid out in land were within the scope of the acts, prior to the statute 36 Geo. III. c. 51, imposing a stamp duty on receipts (*g*): And there is no reason for excepting this class of legacies from the operation of the retrospective schedules (*h*).

Duty on a legacy consisting of forgiveness of a debt.

It was holden in the case of Izon *v.* Butler (*i*) that a bequest by the obligee of a bond to the obligor in these terms, "I remit and forgive to Thomas Whithurst the sum of 500*l.* which he stands indebted to me on his bond, and I direct *the said bond to be delivered up to him and canceled," was merely a personal legacy, and subject to the incidents affecting legacies. And accordingly, in The Attorney-General *v.* Holbrook (*j*), the obligee of a bond, after the death of one James Willis, the principal therein, but during the life of the surety, who was the testator's brother, made his will, containing the following directions relative to the bond: "I hereby forgive the bond debt, both principal and interest, due to me and entered into by James Willis and my brother James Holbrook with and for him, for the said James Willis's paying me the principal sum of 4,000*l.* and interest, &c., &c., and do order the said bond, at my decease, to be delivered up and canceled:" The interest upon the bond was paid up to the death of the testator, whom his brother, James Holbrook, survived: And it was holden that this was a legacy, whereon legacy duty was payable by James Holbrook.

(*e*) Succession duty would now, however, be chargeable under such circumstances by virtue of 16 & 17 Vict. c. 51.

(*f*) See Swabey *v.* Swabey, 15 Sim. 502 (*ante*, p. *540), as to money belonging to the testator, and charged on his own real estate, continuing a charge so as to be subject to legacy duty.

(*g*) Re De Lancey, L. R. 4 Ex. 345. See *ante*, p. *1409. As to liability to succession duty, see sect. 30, of 16 & 17 Vict. c. 51, *ante*, p. *1464.

(*h*) Atty.-Gen. *v.* Hancock, 2 Mees. & W. 568.

(*i*) 2 Price 34.

(*j*) 3 Y. & J. 114. S. C. 12 Price 407.

Whether duty payable on a bequest to creditors.

In Foster *v.* Ley (*k*), where a testatrix bequeathed property in trust to pay off the debts of her first husband that could be legally and satisfactorily proved against him, as it was her will and desire that the same should be discharged, the Court of Common Pleas held, that the creditors ought to pay the legacy duty on their several debts. But in Williamson *v.* Naylor (*l*), where a testator by his will declared that one-fifth of the residue of his personal estate should be divided among certain of his creditors, named in a schedule to his will, and the schedule contained both the names of the creditors, and the debts due to them respectively, the remedy for the recovery of which was barred by the Statute of Limitations; it was held by Lord Lyndhurst, C. B., and afterward by Alderson, B., that the parties so named in the schedule were not to be considered as legatees but as creditors; for that the bequest was not a legacy subject to the *payment of legacy duty, but a trust created by the testator in satisfaction or reduction of debts, the remedy for the recovery of which was barred by the statute (*m*). Nevertheless, in Turner *v.* Martin (*n*), where a testator who was a certificated bankrupt, directed his executors to pay in full all his creditors who had proved, it was held by Lord Cranworth, C., that the legacy duty was payable on the amount which the testator had directed to be paid to the official assignee for that purpose: for that the testator must be regarded as having conferred a mere bounty on the creditors.

Duty on a legacy given to a charity.

In a case before Shadwell, V.-C., Re Franklin's Charity (*o*), Joseph Franklin bequeathed to the poor of the parish of Haddenham 50*l.* per annum forever, to be laid out in bread at Christmas, and distributed by the minister and churchwardens to the most needy objects in the parish: And the testator charged all his leasehold and personal property with this, amongst other legacies: And his honor held, that this was a legacy on which duty ought to be paid; on the ground that, although it was not expressed to be given to any individual, yet, in effect, it was given in such a manner, as that the executor held it in trust for certain puposes: And his honor, in giving his judgment, observed, that where legacies have

(*k*) 2 Bingh. N. C. 269. See O'Connor *v.* Haslam, 5 H. L. C. 170, 174. S. C. cited *nomine* Richards *v.* Foster.

(*l*) 3 Y. & C. 208. *Ante*, p. *1074.

(*m*) See also Phillips *v.* Phillips, 3 Hare, 290.

(*n*) 7 De G. M. & G. 429. See also Re Sowerby's Trusts, 2 Kay & J. 630.

(*o*) 3 Younge & Jerv. 544. S. C. 3 Sim. 147.

[*1493]

been given to treasurers of hospitals, and other charitable institutions, it has been considered as a matter of course to pay the duty.

But in Re Wilkinson (*p*), the Barons of the Exchequer held, that executors cannot be called upon to pay legacy duty upon the whole of a residue bequeathed to them in trust to divide the interest "among poor pious persons, male or female, old or infirm, in ten or fifteen pounds, as they see fit, not omitting large and sick families, if of good *character" (*q*). This judgment, which was afterward affirmed in the Exchequer Chamber (*r*), has been regarded, in effect, as having overruled the above decision of the Vice-Chancellor: And it has been observed, that the 11th section of the statute 36 Geo. III. c. 52 (*s*), on which much stress was laid by the barons, and the judges in error, does not appear to have been brought under his honor's notice, in the argument of the case before him.

However, in The Attorney-General *v.* Fitzgerald (*t*), where the testator gave his residuary estate (which amounted to 13,000*l.*) to his executors to be by them appropriated to the education of the children of the poor in Ireland, principally those in or about Limerick; the same learned judge held that legacy duty was payable on the residue. And his honor said, that there was a material distinction between the case of Re Franklin's Charity and the case of Re Wilkinson: That in the former there was a gift of a perpetual annuity of 50*l.* to be disposed of in charity; in the latter, the judges seem to have considered that there was a gift of a sum in gross, which was at once to be disposed of by the executors, apparently, as if it was not a charity; But that this of itself furnished a material difference between the two cases; because, if the bequest was to be considered as a charitable bequest in its origin, then the Court of Chancery must, of necessity, have a dominion over the subject of the bequest, and would, from time to time, determine in what manner the property should be enjoyed; and long before any person participated, the legacy must be paid: And his honor added, that he much doubted whether either portion *of the 11th section of 36 Geo. III. c. 52, applies to a case,

(*p*) 1 Cr. Mees. & Rosc. 142. S. C. 4 Tyrwh. 514.

(*q*) If any of the objects of the above bounty should have received to the amount of 20*l.* or upward, by having been selected to receive such bounty on more than one occasion, legacy duty would attach on such amount, and the duty would be calculated according to the nearness of blood of such individual, and in that case the executors would be accountable for, and bound to retain the duty chargeable on such amount: Re Wilkinson, 1 Cr. Mees. & Rosc. 142.

(*r*) Atty.-Gen. *v.* Nash, 1 Mees. & Wels. 237.

(*s*) See *ante*, pp. *1415, *1416.

(*t*) 13 Sim. 83.

where the whole subject of the bequest must be taken *in solido*, at once, for the purpose of being applied in perpetuity, in some manner that may be such that no one individual will ever participate in the subject itself, but will have a benefit which results from the application of a large sum of money in some given manner, not consisting in the payment of money: The learned judge proceeded to express his opinion, that the legacy in question was liable to duty in the same manner as if it had been given to the trustees for an existing school for the purposes specified. This view of the subject was recognized and acted upon by Parke, B., in a similar case, on a subsequent occasion, Re Griffith's (*u*), and the learned baron expressed his concurrence in this opinion of V.-C. Shadwell. And in two subsequent cases (*x*), Romilly, M. R., declined to follow the case of Re Wilkinson and said he believed that decision had been afterward disapproved of by the court which decided it. Again in a late case (*y*), the Court of Exchequer held, that a bequest of money for the purpose of building a church and parsonage house, and of endowing and repairing the church, was subject to a legacy duty of 10*l.* per cent. (*z*).

In cases within the operation of the Succession Duty Act, all questions of this kind will be disposed of by the 16th section of that statute (*a*).

39 Geo. 3, c. 73.

No legacy of books bequeathed to any body corporate, &c., to be preserved shall be liable to any duty.

The statute of 39 Geo. III. c. 73, after reciting that "it is expedient that certain specific legacies given to bodies corporate, or other public bodies and societies, should be exempted from the duties imposed on legacies," proceeds to enact, "that no legacy consisting of books, prints, pictures, *statues, gems, coins, medals, specimens of natural history, or other specific articles, which shall be given or bequeathed to or in trust for any body corporate, whether aggregate or sole, or to the Society of Serjeants' Inn, or any of the Inns of Court or Chancery, or any endowed school, in order to be kept and preserved by such body corporate, society, or school, and not for the purposes of sale, shall be liable to any duty imposed on legacies by any law now in force."

(*u*) 14 M. & W. 510.

(*x*) Re Pearce, 24 Beav. 491. Harris *v.* Earl Howe, 29 Beav. 261.

(*y*) Re Parker, 4 H. & N. 666.

(*z*) The barons were of opinion that at all events the duty was payable under the 16th section of the Succession Duty Act.

(*a*) *Ante*, p. *1420.

[*1496]

It has been long established that property in this country, belonging to a foreigner who dies domiciled abroad, and appoints an English executor, and bequeaths to English legatees, is not liable to legacy duty (*b*).

Duty on legacies of property in this country belonging to a foreigner.

If the testator was a British subject domiciled in Great Britain, all his personal property, in whatever part of the world it may be situate, is considered as English personal estate, and is liable to the duties imposed by the statutes on legacies and successions: For the rule is, that personal property follows the person, and is not in any way to be regulated by the *situs* (*c*): Thus, in Re Ewin (*d*), it was held by the Court of Exchequer, that American, Austrian, French and Russian stock, the property of a testator domiciled in England, was liable to legacy duty.

Duty on legacies of property situate out of Great Britain.

But it is clear that the legacy acts are co-extensive with the limits of this kingdom, and this kingdom only, and do not extend to the territorial possessions of the crown in the colonies (*e*). Hence, where persons die domiciled in India, whose estates, though the estates of British subjects, are distributed in India, they are not chargeable with any legacy duty (*f*). Hence, also, if a testator die domiciled in India, and his personal estate be wholly in India, and his executor be resident there, and the executor remit to a legatee in *England, or to some other person in England, for the specific use of the legatee, the amount of his legacy, it has uniformly been held that no legacy duty is payable on such remittance, inasmuch as the whole estate is administered in India, and the remittance is in respect of a demand which is considered as established there (*g*). Accordingly, in Hay *v.* Fairlie (*h*), a testator, resident in India, bequeathed to an infant a sum of money to be invested in the company's securities, of which the interest was to be applied to her maintenance, and the principal to be settled upon herself for life, with remainder to her children: He was lost on his voyage to England, leaving all his property in India: His executors, resident in that country, proved his will at Calcutta, invested the legacy in the company's securities, and for several years remitted the interest to their correspondents in London, for the benefit of the legatee, who had come to England: A part of that interest was brought into court

(*b*) Re Bruce, 2 Cr. & J. 436. S. C. 2 Tyrwh. 475.

(*c*) See *ante*, p. *1387 *et seq.*

(*d*) 1 Cr. & J. 151.

(*e*) 1 Cr. & J. 153. 1 Tyrwh. 108, by Alexander, L. C. B. 1 Cr. & J. 158. 1 Tyrwh. 107, by Bayley, B.

(*f*) By Alexander, L. C. B. 1 Cr. & J. 153. 1 Tyrwh. 108.

(*g*) By Sir J. Leach, V.-C., in Logan *v.* Fairlie, 2 Sim. & Stu. 291.

(*h*) 1 Russ. Chanc. Cas. 117.

[*1497]

in a suit established by her for the appointment of a guardian and for the allowance of maintenance, and an order was made for the payment to her guardian, out of the fund so created, of 200*l.* a year, as maintenance: And Lord Gifford, M. R., held that there was a specific appropriation in India of the legacy, and that the payment of 200*l.* a year was not liable to the legacy duty. So, in Logan *v.* Fairlie (*i*), a testator resident in India, and having all his property there, bequeathed his residuary personal estate to his brother, J. H., and his sister, H. L., in equal shares; but in case his sister should die before him, then to her children: The executor, who was also resident in India, having proved the will there, remitted the residue to his agent in England, with a letter in which he desired the agent to appropriate the fund according to the annexed extract of the will, by which it would be perceived that half went to J. H. and half to H. L. or her children: H. L. had died in the lifetime of the testator, leaving nine *infant children: A suit was instituted in England by the children against the agent, and also against the executor and J. H., who were both out of the jurisdiction, for the purpose of having a moiety of the fund secured: And it was held, by the Lords Commissioners Pepys and Bosanquet, that no legacy duty was payable upon such moiety, inasmuch as it had been appropriated in India.

The rule was once supposed to be different, where, although the testator was domiciled abroad, the assets came to be administered in England: Thus in The Attorney-General *v.* Cockerell (*j*), the Barons of the Exchequer held, that legacies bequeathed by a British subject resident in the East Indies, out of his personal estate, to persons living in England are liable to the duty, if the executor proves the will in England, and pays the legacies here, notwithstanding the testator realized and possessed his property in India, resided there, made his will there, and died there; and although the executors were in India at the time of their appointment, and the will was originally proved there. So in The Attorney-General *v.* Beatson (*k*), it was holden by the Court of Exchequer, that the legacy duty is payable on bequests of personal property in India, by a will there, and administration granted under it there, if it be remitted to England, and applied by another administrator in Scotland, under administration granted in England. Again, in Logan *v.* Fairlie (*l*), Sir John Leach, V.-C., expressed his opinion that if a part of the assets of a testator, who at his death was resident in India, and had all his property there, is found

(*i*) Myl. & Cr. 59.
(*j*) 1 Price 165.
(*k*) 7 Price 560.
(*l*) 2 Sim. & Stu 284.

[*1498]

in England, in the hands of the agent of his executor, without any specific appropriation, and a legatee in England institute a suit here for the payment of his legacy, out of such unappropriated assets, then such assets are to be considered as administered in England, and the legacy duty is payable in respect of them.

*But modern decisions appear to have overruled this distinction: and it must be regarded as now fully established that the personal assets situate in India, of a testator who resides and makes his will, and dies in India, are not subject to legacy duty, although such assets are afterward remitted to this country, by an executor who has proved the will in India, to executors who have proved the will in England, and are administered under a decree of the Court of Chancery here. Thus, in Jackson *v.* Forbes (*m*), a testator born in Scotland, who resided and died in India, having real and personal property there situate, but no assets in England, by his will and testamentary papers, left the whole of his property in equal divisions to his four natural children, or the survivors of them, and their heirs, subject to legacies and annuities: His executors obtained an Indian probate, and paid the debts and bequests, and converted the principal part of the estate into money which they sent to their bankers in England, and invested it in the funds in their own names: Proceedings were commenced in England against the executors, to determine the claims under the will; whereupon the stock was transferred into the name of the Accountant-General of the Court of Chancery, and the court made a decree ascertaining the shares of the several claimants: And the Barons of the Exchequer held that the legacy duty was not payable on legacies or shares of the residue bequeathed. And this decision was affirmed in the House of Lords (*n*). Again, in Arnold *v.* Arnold (*o*), a man possessed of personal estates, situate partly in England, but principally in the East Indies, where he was employed in the service of the East India Company, made his will in the East Indies, and died there: After specifically bequeathing his property in England to his wife, his will gave considerable pecuniary legacies to his infant children, and to various other persons, some of whom were native inhabitants of India. *One of the executors lived in Calcutta, and proved the will there, and having collected the Indian assets, and thereout paid the testator's Indian debts and funeral expenses, he remitted the surplus to England to the other executors, by whom probate of the will, in

(*m*) 2 Cr. & J. 382.

(*n*) Atty.-Gen. *v.* Jackson, 8 Bligh. 15. S. C. *nomine* Atty.-Gen. *v.* Forbes, 2 Cl. & F. 48.

(*o*) 2 Myln. & Cr. 256.

[*1499] [*1500]

respect of the property in England, had been already obtained in this country: In a suit instituted in this court by the testator's children against the executors, for the administration of the estate, the fund so remitted was transferred into court, and having proved insufficient to pay the pecuniary legacies in full, it was ultimately ordered to be apportioned among the different legatees, in proportion to their respective legacies: And Lord Cottenham held, that the legacy duty was not payable in respect of any of the sums so appropriated to the respective legatees: His lordship considered the decision by the House of Lords in The Attorney-General *v.* Jackson as precisely in point, and conclusive of the case before him: But the learned judge also stated, that independently of that authority, he should upon the construction of the act (36 Geo. III. c. 52) (*p*), have been of opinion that the legacies in question were not legacies given by the will of a person intended by the act: for when the act speaks of "any Will of any person" and of the legacies being payable out of the personal estate, it must be considered as speaking of persons and wills, and personal estates in this country: that being the limit of the sphere of the enactment (*q*).

If the deceased, whether a British born subject or a foreigner, died domiciled here, all the assets, wherever situate, are liable to the duty: if he died domiciled abroad, all are exempt.

It may be observed that there were still several questions connected with these authorities, which could not be regarded *as precisely settled by them. Thus, it was undecided, whether property situate abroad, or in this country, belonging to an alien who is domiciled here, is liable to the duty: or whether property, situate in this country, belonging to a British subject who dies domiciled in the British colonies, or domiciled in a foreign country (*r*), is so liable. In a former edition of this work, Sir Edward Vaughan Williams suggested that the principle ought to be applied to these cases (as it appears to have been in the decision of the case of Re Ewin (*s*), that personal property follows the person and is to be con-

(*p*) See *ante*, p. *1410 *et seq.*

(*q*) The decision in this case must not be understood as at all qualifying the decision of the Court of Exchequer, Re Ewin, 1 Cr. & J. 151, *ante*, p. *1496. On the contrary, it was decided by the barons of the court (Re Coales, 7 M. & W. 390) that if a British born subject, domiciled in England, dies here and makes his will here, leaving assets in India, which are administered by his executor here, they are subject to the legacy duty, notwithstanding they were received in India and remitted to the executor here by an administrator *cum testamento annexo* appointed under an Indian grant of administration.

(*r*) See Atty.-Gen. *v.* Dunn, 6 Mees & W. 511.

(*s*) 1 Cr. & J. 151, *ante*, p. *1496.

sidered as situate wherever the domicil of the proprietor is (*t*) ; and consequently, that if the deceased, whether a British subject or a foreigner, died domiciled in England, all his personal estate, wherever situate, is to be regarded as English estate, and therefore liable : But if he died domiciled out of England, then the whole of his personal property, wherever it happened to be at the time of his death, is to be regarded as situate in the country of domicile, and therefore exempt. This suggestion has been fully justified by the subsequent decision of the House of Lords in the case of Thompson *v.* The Advocate-General (*u*) : There a British born subject died domiciled in a British colony : At the time of his death he was possessed of personal property locally situate in Scotland : Probate of his will was taken out in Scotland, for the purpose of there administering this property : and out of the fund thus obtained by the executor, legacies were paid to legatees residing in Scotland : And, it was held, on the principle above mentioned, that legacy duty was not payable in respect of these legacies. In the course of the discussion of this case, the following question was put by the house to the judges : *viz.* " A., a British born subject, born in England, resided in a British *colony : He made his Will, and died domiciled there : At the time of his death, he had debts owing to him in England : His executors in England collected these debts, and out of the money so collected paid legacies to certain legatees in England. The question is, are such legacies liable to the payment of legacy duty ? " The judges were unanimously of opinion in the negative. And the house decided accordingly.——This case was afterward regarded by the Court of Exchequer in The Attorney-General *v.* Napier (*x*) as having definitely settled the principle above stated ; and the barons decided accordingly a converse case ; *viz.* that where the intestate was domiciled in England and the property abroad, it was liable to the duty.

So as to succession duty.

Accordingly it has been held that succession duty is not payable on legacies given by the will of a person domiciled in a foreign country (*y*).

The same principle applies to cases, where legacies are given in

(*t*) See *ante*, p. *1387 *et seq.*

(*u*) 12 Cl. & F. 1. S. C. 13 Sim. 153. See also *Accord.* The Commissioners of Charitable Donations *v.* Devereux, 13 Sim. 14. Chatfield *v.* Berchtoldt, L. R. 12 Eq. 464. L. R. 7 Ch. 192.

(*x*) 6 Exch. 217, 220.

(*y*) Wallace *v.* Atty.-Gen., L. R. 1 Ch. 1. See also Atty.-Gen. *v.* Campbell, L. R. 5 H. L. 524, and *compare* Re Capdevielle, 2 H. & C. 985. Atty.-Gen. *v.* Blucher de Wahlstatt, 3 H. & C. 374. Re Badart's Trusts, L. R. 10 Eq. 288. And see *ante*, p. *1446 (*r*).

[*1502]

exercise of powers—for though in such cases the rule that the property follows the person can hardly be applied, yet the statute (36 Geo. III. c. 52, s. 7), having put into one class legacies given by testators out of personal estate, or out of any personal estate they may have had power to dispose of, could not have intended that a different rule should apply to different members of the class, and that duties should be payable by the appointees under the wills of donees of powers domiciled out of Great Britain, when no duty would be payable by legatees under the wills of those persons to be paid out of their personal estates (*z*). But the rule is different as to succession duty on testamentary appointments under English instruments (*a*).

The rule applies to legacies given in exercise of powers by testator domiciled out of England:

but not to succession duty.

*This difference is well illustrated by the two cases of The Attorney-General *v.* Campbell (*b*) and Lyall *v.* Lyall (*c*). In The Attorney-General *v.* Campbell, A. was domiciled in Portugal, but on a visit to England made his will in English form and appointed executors, some of whom resided in England. He desired his executors to collect his property, which was in Portugal, to convert it into cash, pay certain legacies and invest the residue in the English 3 per cents., to appropriate what they should think necessary to pay a life annuity of 50*l.* to his sister, on the termination of which the appropriated fund was to revert to and form part of his residuary estate, and be divided (like the rest) among his three children. The executors exactly performed the directions of the trust; when the sister died the part appropriated to satisfy her annuity became divisible among the children: And it was held that this constituted a succession within the meaning of the second section of the Succession Duty Act, and was liable to the payment of succession duty. The general rule is stated to be that: Where personal property is bequeathed by a person not domiciled in this country, it is not, in the first instance liable to legacy or succession duty on being paid to the legatee. But where the executor directed to collect foreign property and invest it here, has discharged the duty imposed on him and has placed the fund, in the way required, in this country, any subsequent devolution of it becomes liable to duty, though the party on whom it may devolve may (like the testator) be domiciled abroad.

(*z*) Re Wallop's Trusts, 1 De G. J. & S. 656.

(*a*) *Ibid.* See also Re Lovelace, 4 De G. & J. 340.

(*b*) L. R. 11 Eq. 378. L. R. 5. H. L. 524.

(*c*) L. R. 15 Eq. 1.

[*1503]

The case of Lyall *v.* Lyall was as follows: By a marriage settlement executed in England, the husband assigned to trustees (all domiciled and resident in England) an English policy of assurance, effected on his own life for 2,000*l.*, payable at the expiration of six months after his death, and a sum of consols, and covenanted to pay to the trustees within three years the sum of 1,000*l.*; and it was declared *that the policy moneys and the 1,000*l.* should be held upon trust for investment and payment of the income to the wife for life, and then to the husband for life and then for division among the children of the marriage. The husband died within three years, having been at the time of his marriage, and thenceforth, up to the time of his death, domiciled in New South Wales. The wife survived only three months, and left one child, the plaintiff, who was also domiciled abroad. At the time of the wife's death neither the policy moneys nor the 1,000*l.* covenanted to be paid to the trustees had been paid to them: And it was held on the authority of The Attorney-General *v.* Campbell that succession duty was payable by the plaintiff on the funds to which he became entitled under the settlement. By his will the husband appointed trustees and executors in New South Wales to collect his residuary estate (which was all locally situate in that country), and transmit the same to trustees and executors in England who were to invest the funds so transmitted in England and pay the income to his wife for life, and after her death to divide the same among the children. At the time of his wife's death no part of the residuary estate had reached the hands of the English trustees, but large remittances were afterward made to them: And it was held that no succession duty was payable by the plaintiff on the funds to which he became entitled under the will.

[*1504]

*CHAPTER THE THIRD.

BY WHOM THE DUTIES ARE PAYABLE.

Duties payable by executor or administrator unless otherwise provided for.

It will be observed, by referring to the statute 36 Geo. III. c. 52, s. 6, that the duties, in all cases wherein it is not otherwise thereby provided for, must be paid by the executor or administrator, upon retainer for his own benefit, or for the benefit of any other persons, of any legacy or part of any legacy, or of the residue or any part of such residue, which he shall be entitled so to retain; and also upon delivery, payment, or discharge of any legacy or residue, &c., to which any other person shall be entitled (*a*). It is the duty of the executors to deduct the legacy duty when they pay the legacy, and if they do not do so, they are made personally responsible (*b*).

Legacy duty to be deducted by executor or administrator.

By the statute 45 Geo. III. c. 28, s. 5 (*c*), it is provided, that the duties imposed on legacies charged upon, or made payable out of real estate, &c., shall be paid by the trustee or other person entitled to the real estate which is subject to the legacy, and that the duty shall be retained by the person paying such legacy, in like manner as is provided, respecting legacies out of personal estate, by the statute 36 Geo. III. c. 52 (*d*). In the case of The Attorney-General *v.* Jackson, before stated (*e*), the land out of which the legacy was payable, *had been devised to two persons in moieties; the one moiety to the one for life, and the other moiety to the other in fee: And the Court of Exchequer held, that both the parties, the tenant for life of the one moiety, and the tenant in fee of the other, were liable to the crown for the payment of the legacy duty.

The collection of the succession duty is provided for by the 44th

(*a*) See *ante*, p. *1410.

(*b*) *Per* Parke, B., in Re Sammon, 3 Mees. & W. 386. There is a plain distinction between legacy duty and succession duty in this respect—the Legacy Duty Act provides that the executors shall be liable to see to the payment of the duty; the Succession Duty Act does not contain a similar provision applicable to sums which an executor has to pay under a covenant: *per* Lindley, L. J., in Re Higgins, 31 C. D. 142, 146. As to limitation of an executor's liability by lapse of time, see *post*, p. *1515, and see *ante*, p. *1411.

(*c*) See *ante*, p. *1441.

(*d*) See *ante*, p. *1410 *et seq.*

(*e*) See *ante* p. *1489.

and five following sections of the statute 16 & 17 Vict. c. 51, by which that duty is imposed (*f*). And it will be observed, that by the interpretation clause (*g*), the term "trustee" is to include an executor or administrator.

It was decided in Hales *v.* Freeman (*h*), upon the construction of the Legacy Duty Acts, that a trustee under a will, who had paid the legacy duty upon an annuity, charged on land, after the expiration of four years from the death of the testator, might recover the amount of duty so paid from the legatee, notwithstanding a previous assignment of the annuity by such legatee (*i*).

But a question may arise, whether the legacies are not, by the terms of the will, to be paid in full, free of the legacy duty, so as to make it incumbent on the executor to retain the duty out of the residue, instead of deducting it from the payment to the legatee (*k*).

*In Barksdale *v.* Gilliat (*l*), the testator directed all the legacies to be paid at the expiration of six months after his decease *without any deduction:* And Lord Eldon held, that the legatees were entitled to the full amount, and that the legacy duty must be paid by the executors. So in Smith *v.* Anderson (*m*), the testator gave certain annu-

(*f*) See *ante*, p. *1471 *et seq.*

(*g*) See *ante*, p. *1446.

(*h*) 1 Brod. & Bing. 391. S. C. 4 Moo. 21.

(*i*) This case was recognized and acted on in Stow *v.* Davenport, 5 B. & Adol. 366. Bate *v.* Payne, 13 Q. B. 900. A purchaser from a legatee is not necessarily subject to the same liability as the legatee himself in this respect: Farwell *v.* Seale, 3 De G. & Sm. 359.

(*k*) In such cases, no duty shall be chargeable on the money to be applied to the payment of the duty: See stat. 36 Geo. 3, c. 52, s. 21, *ante*, p. *1423. A direction in a will, "I direct all the legacies left by my will and codicil to be paid free of legacy duty," will not free property liable to succession duty from that duty: Re Johnston, 26 C. D. 538, 554. In the case of Re Johnston, 26 C. D. 538, it was held that under the words "all the legacies left by my will and codicil to be paid free of legacy duty," the legacy duty was to be paid out of the estate on all legacies as well pecuniary as specific, the word "paid" not being sufficient under the circumstances to cut down the direction to pecuniary legacies only. See also Ansley *v.* Cotton, 16 L. J. Ch. 55, where it was held that the general term "legacy" will include a gift of stock, and Douglas *v.* Congreve, 1 Keen 410, where it was held that the term "pecuniary legacy" will not have that effect, although it will include the forgiveness of a debt: Morris *v.* Livie, 11 L. J. Ch. 172. Where a particular legacy is directed to be paid free of legacy duty, and the estate is insufficient to pay all the legacies, the legacy duty on the sum to be actually received by the legatee must be paid by the executor before apportioning the fund available for the payment of the legacies ratably amongst the legatees: Re Wilkins, 27 C. D. 703. Heath *v.* Nugent, 29 Beav. 226.

(*l*) 1 Swanst. 562.

(*m*) 4 Russ. Chanc. Cas. 352.

[*1507]

ities, and directed them to be paid *without any deduction whatsoever:* And Sir John Leach, M. R., held, that the annuities should be paid clear of legacy duty, on the ground, that, from the nature of the property out of which the annuities were to be paid, there could be no deduction, except in respect of the legacy duty: His honor, in giving judgment, said, that he admitted that it was to be stated as the fair result of Lord Eldon's judgment in the above case of Barksdale *v.* Gilliat, that his lordship considered that a direction to pay annuities without deduction would not extend to exempt the annuitants from the legacy duty, if, from the nature of the property out of which the annuities were payable, there was any other deduction to which the annuities might be subject. The correctness, however, of this view of Lord Eldon's judgment was denied by Lord Brougham in Louch *v.* Peters (*n*), and by Alderson, B., in Gude *v.* Mumford (*o*).

In Dawkins *v.* Tatham (*p*), an annuity was given by a *will, *clear of all deductions*, and was directed to be paid out of certain sums of stock standing in the testator's name: And Sir L. Shadwell, V.-C., held that the executors were bound to pay the legacy, free from the legacy tax.

In Stow *v.* Davenport (*q*), lands were devised to the use among others, that M. A. F. should take, from and out of the same premises, an annuity or yearly charge of 500*l.* a year, to be paid *clear of all taxes and deductions*, remainder to S. for life, subject to the annuity: And the Court of King's Bench held, that the annuity was to be paid clear of legacy duty, and was a charge upon the land; and consequently, that S., who had entered into possession under the devise to him, and been compelled to pay the legacy duty on the annuity, pursuant to 45 Geo. III. c. 28, s. 5, could not recover it again from the annuitant (*r*).

(*n*) 1 M. & K. 489.

(*o*) 2 Y. & C. 448.

(*p*) 2 Sim. 492. It must be observed, that in the case already mentioned of Hales *v.* Freeman, 1 Brod. & Bingh. 391, the Court of C. P. held that a legatee, to whom an annuity was given "clear of all deduction," was compellable to refund the amount of the duty: But the point which might have been raised upon the construction of these words does not appear to have been noticed by either the bar or the bench; and the argument and decision proceeded on a totally distinct ground.

(*q*) 5 B. & Adol. 359. S. C. Nev. & M. 805.

(*r*) Whether or not an annuity is to be free from any deduction for income tax must depend upon the meaning of the words used by the testator, that is, upon the meaning with which he uses the word "deduction." *Prima facie* the word "deduction" does not include income tax, because income tax is not a deduction, but a payment—to be made

[*1508]

Again, in Louch *v.* Peters (*s*), a testatrix gave to L. for his life an annuity or clear yearly sum of 500*l.*, to be paid and payable half yearly, out of real estate, *clear of all taxes and outgoings:* And it was held, by Sir J. Leach, M. R., and *afterward by Lord Brougham on appeal, that the annuitant took it clear of the legacy duty.

Further, in Courtoy *v.* Vincent (*t*), a testator directed his executors and trustees to pay certain annuities and legacies *clear* of the property tax, and *all expenses attending the same:* And it was held by Sir T. Plumer, M. R., that the legacy duty ought to be paid out of the assets of the testator, and that the annuitants and legatees were entitled to receive the full amount of their respective legacies and annuities, without any deductions in respect of legacy duty.

So in Godsden *v.* Dotterill (*u*), a testator bequeathed to his sister a legacy of 100*l.*, to be paid to her *free from all expense;* and it was held by Sir J. Leach, M. R., that this legacy was to be paid discharged of duty.

Again, in Gude *v.* Mumford (*v*), a testator devised to James Metherell, for his life, "one annuity or *clear* yearly sum of 100*l.*," and charged his estates at Chobham with the payment of "the said annuity or yearly sum of 100*l.*": He then devised the estates at Chobham to trustees, in trust to levy and raise the annuity, and pay the same to James Metherell; and subject thereto, and all costs, charges, and expenses attending the raising and paying the same, in trust for A. for life, with remainder to B. in fee: And Alderson, B., held, that James Metherell was entitled to the annuity clear of all deductions for legacy duty, and that the residuary estate was chargeable with the duty payable thereon: The learned baron observed, that it was clear, from the authorities on the subject, that if, from any directions contained in the will, an intention on the part of the testator can be collected that the legacy duty should be paid by the executor, the court will carry that direction into effect: And the learned judge denied

by the recipient of the legacy; and there must be something else besides the word "deduction" to make the gift of an annuity free of income tax. In the cases of Festing *v.* Taylor, 3 B. & S. 217. Lord Lovat *v.* Duchess of Leeds, 2 Dr. & Sm. 62. Turner *v.* Mullineux, 1 J. & H. 334. Re Bannerman's Estate, 21 C. D. 105, the court found sufficient to construe the will in the wider sense. In the cases of Wall *v.* Wall, 15 Sim. 513. Lethbridge *v.* Thurlow, 15 Beav. 334. Abadam *v.* Abadam, 33 Beav. 475. Sadler *v.* Rickards, 4 K. & J. 302. Peareth *v.* Marriott, 22 C. D. 182. Gleadow *v.* Leetham, 22 C. D. 269, the court was unable to admit such construction.

(*s*) 1 M. & K. 489.

(*t*) 1 Turn. & Russ. 433.

(*u*) 1 M. & K. 56.

(*v*) 2 Younge & Coll. 448.

[*1509]

that the view taken by Sir J. Leach (*x*), of Lord Eldon's judgment in Barksdale *v.* Gilliat, was correct: but declared his opinion, that the *right construction of it was, that Lord Eldon considered the words "without deduction" to mean, in their ordinary sense, "clear of all deduction," and then went on to examine, whether, in the four corners of the will, he could find the same words used, in another sense, or in a more definite and limited sense; and whether, if he could find an intention to use them in a limited sense, he could carry that intention into effect; and upon the whole he arrived at the conclusion that the words must be used in their ordinary sense without qualification (*y*).

But in Foster *v.* Ley (*z*), where a testatrix bequeathed property in trust "to pay off the debts of her first husband, as it was her will that the same should be discharged," and the money remaining unexpended, to her nephew; the Court of Common Pleas held, that the creditors ought to pay the legacy duty upon their several debts; and that the matter having been overlooked in an order made by the Court of Chancery for the payment of the debts, the executors, who had paid the debts in full, and then paid the legacy duty, might recover the amount from the creditors respectively, in an action for money paid to their use.

Again, in Sanders *v.* Kiddell (*a*), a testatrix gave to trustees such a sum of money as that the annual produce thereof, when invested in the funds, would produce the *clear* yearly sum of 500*l.*, upon trust to pay the annual produce to certain of her relations in succession for life, and afterward, as to one-fifth part, upon trust to pay it to M. C. Gascoigne for his life, and after his decease, to any wife who might survive him, during her life, and after the decease of the survivor of them, upon trust for his children: And Sir L. Shadwell, V.-C., held that the fund was not exempted from legacy duty; for that it appeared, from the language of the *will, that the testatrix meant that what she had directed to be done, should be done at once; that M. C. Gascoigne might or might not marry a relation of the testatrix, and his children might be related in some degree to the testatrix, or they might not; and, therefore, that the word "clear" must be taken to refer not to the legacy duty, but to the expenses of investment, and so on (*b*).

(*x*) See *ante*, p. *1507.

(*y*) See also *Accord.* Marris *v.* Burton, 11 Sim. 161. Ford *v.* Ruxton, 1 Coll. 403. Bailey *v.* Boult, 14 Beav. 595. Haynes *v.* Haynes, 3 De G. M. & G. 590. 19 Beav. 499. Warbrick *v.* Varley, 30 Beav. 241. Re Coles's Will, L. R. 8 Eq. 271.

(*z*) 2 Bingh. N. S. 269.

(*a*) 7 Sim. 536.

(*b*) In this case the testator did not use the words "clear of all deductions,"

[*1510] [*1511]

And this case was recognized and acted upon by Romilly, M. R., in Pridie *v.* Field (*c*).

Where one legacy is given by will free of duty, and by a codicil another is given in *substitution* of that given by the will, and upon the same trusts, the substituted legacy is also to be considered as given free from the duty; because, being a mere substitution, it is *prima facie* attended with the same incidents: so where a subsequent addition is made to a prior legacy, the addition will have the same qualities (*d*).

Thus in Cooper *v.* Day (*e*), the testator gave to his widow 800*l.*, payable within three months from his death, and free from legacy duty: He also gave 4,000*l.* to trustees, payable to them within the same period, free from legacy duty, in trust for his two daughters, to be paid at twenty-one, with intermediate interest for their maintenance: By a codicil, the testator bequeathed to his wife an additional sum of 200*l.* free from legacy duty: he also revoked the legacy of 4,000*l.* and in substitution gave in trust for his daughters 5,000*l.*, "upon the trusts, and to and for the same intents and purposes, and under and subject to the same powers, provisoes and limitations, as expressed in his will concerning the legacy of 4,000*l.*;" By a second codicil the testator revoked the gift of 5,000*l.*, and gave in its place 6,000*l.* to the same trustees, *upon the trusts, &c., following the words in the first codicil: The only question was, whether the legacy of 6,000*l.* was to be paid free of the legacy duty: and Sir William Grant declared, upon the authority of the cases of Leacroft *v.* Maynard (*f*), and Crowder *v.* Clowes (*g*), that the substituted legacy of 6,000*l.* was to be taken as exempted from the legacy duty, in like manner with the original legacy, in the place of which it was given. So in Shaftesbury *v.* Marlborough (*h*), a testator by his will gave an annuity to his grandson, and directed the executors to pay the legacy duty on all the legacies and annuities given by his will: By a codicil, he gave an annuity to his grandson *in lieu* of the annuity given by his will: And Sir L. Shadwell, V.-C., held, that the annuity given by the codicil was

and besides, the parties were to take in succession: *per* Shadwell, V.-C., in Marris *v.* Burton, 11 Sim. 161, 163. Where a legacy, the fund being in court, was assigned by a deed, which represented that it was *unincumbered*, it was held that the legacy duty did not constitute an "incumbrance": Bliss *v.* Putnam, 7 Beav. 40.

(*c*) 19 Beav. 497.

(*d*) By Sir J. Leach, V.-C., 6 Madd. 31. See the cases collected, *ante*, p. *1162, note (*h*). *Post*, p. *1512, note (*i*).

(*e*) 3 Meriv. 154.

(*f*) 3 Bro. C. C. 223. S. C. 1 Ves. 279.

(*g*) 2 Ves. 449, 450.

(*h*) 7 Sim. 237.

[*1512]

free from legacy duty; his honor observing, that when the thing bequeathed by a codicil is given as a mere substitution for that which is bequeathed by the will, it is to be taken with all its accidents (*i*).

But in Chatteris *v.* Young (*j*), the testator bequeathed to his daughter 50,000*l.*, of which 20,000*l.* was to be paid to her absolutely, and, as to the remaining 30,000*l.*, she was to receive the interest to her separate use during her life, and after her death, the principal was to be paid to such person or persons, as she might by her will appoint; and, after giving various other legacies, and bequeathing to the same daughter a share of the residue of his personal estate, he directed that all the specific and pecuniary legacies thereinbefore bequeathed should be paid to the respective legatees free of the legacy duty: The daughter having died in his lifetime, he afterward by a codicil, "instead of the legacies given to her by my will, which are now lapsed," bequeathed to her husband 20,000*l.*: Sir John Leach, V.-C., decreed (*k*), *that the husband was not entitled to have the 20,000*l.* paid to him free of legacy duty: And upon appeal to the Lord Chancellor his lordship (Lord Lyndhurst) was of opinion that the legacy given to the husband by the codicil could not be considered as given by way of substitution for the legacy which the will had destined for his wife, but was an independent, distinct, substantive bequest: He therefore confirmed the judgment of the Vice-Chancellor, and dismissed the appeal (*l*).

In Byne *v.* Currey (*m*), a testator by his will, bequeathed certain legacies to charitable institutions, and directed that they should be paid as follows, "Which charitable legacies I direct may be paid out of my personal estate, prior to the payment of my debts, and the said legacies hereby by me given and bequeathed:" He then directed "all his legacies to be paid within two years after his decease, free of any deduction for tax or duty:" By a codicil, he bequeathed legacies payable and raisable immediately: And the Court of Exchequer held, that the charitable legacies, and the legacies given by the codicil raisable immediately, were payable free from legacy duty (*n*).

In Douglas *v.* Congreve (*o*), a testator gave to M. S. 50,000*l.*, three

(*i*) See also *Accord.* Fisher *v.* Brierley, 30 Beav. 267. Johnstone *v.* Lord Harrowby, 1 De G. F. & J. 428, overruling S. C. Johns. 425.

(*j*) 2 Russ. Chanc. Cas. 183.

(*k*) 6 Madd. 30.

(*l*) See also Burrows *v.* Cottrell, 3 Sim. 375. Early *v.* Benbow, *ante*, p. *7, note (*s*).

(*m*) 2 Cr. & Mees. 603. S. C. 4 Tyrwh. 479.

(*n*) See *Accord.* Williams *v.* Hughes, 24 Beav. 474.

(*o*) 1 Keen 410.

[*1513]

per cent. consols, to be transferred within six months after his decease, and, after giving a variety of specific and pecuniary legacies, he directed that the duty upon all the pecuniary legacies thereinbefore bequeathed should be paid out of his general personal estate: And Lord Langdale, M. R., held, that the legacy of the stock was not a pecuniary legacy, and consequently not exempted under this clause of the will from the payment of legacy duty.

In White *v.* Lake (*p*), a testator gave several pecuniary and specific legacies, and directed that "all legacies and bequests" *by his will given, should be paid or satisfied free of duty, and he devised his residuary real estate to A. for life, and afterward upon trust for sale: and Lord Romilly, M. R., held, upon the ordinary meaning of the words "legacies and bequests," and also upon the general construction of the will, that the legacy duty which would become payable on the proceeds of the real estate, was not payable out of the personal estate.

In Lord Londesborough *v.* Somerville (*q*), the testator directed legacy duty to be paid out of his general personal estate on the annuities and pecuniary legacies given by the will: And it was held by Romilly, M. R., that the income of residuary uninvested personal estate directed to be invested in land and settled to uses, was not an annuity within such direction (*r*).

Out of what fund the duty is to be paid.

In Noel *v.* Lord Henley (*s*), a legacy was bequeathed to be paid out of the rents and profits, and the produce of the sale of a real estate devised to be sold for the payment of such legacy, *inter alia:* In a subsequent part of the will this legacy was directed by a general clause, extending to all the legacies before given, to be paid in full, free of the duty: And the Court of

(*p*) L. R. 6 Eq. 188.

(*q*) 19 Beav. 295.

Exemption of legatee for life extended to legatee in remainder.

(*r*) In Calvert *v.* Sebbon, 2 Keen 672, a testator bequeathed some specific chattels and a sum of 200*l.* to A., and he directed his executors to invest in the funds such a sum as would produce 200*l.* a year, clear of the legacy duty, and all other deductions, which annual sum was to be paid to A. for her life, and after her decease the principal was to be paid to other parties; and the testator directed his executors to pay the legacy duty on the specific and pecuniary legacies and yearly sum given to A.: A. and the legatees in remainder, were strangers in blood to the testator; so that the same rate of duty was chargeable on the whole bequest, and the full amount of the duty payable at once (see *ante*, pp. *1416, *1417): And Lord Langdale, M. R., held, that the legacy duty was payable out of the testator's residuary estate, both in respect to the interest given to A., and to those in remainder; inasmuch as the residuary legatee could not on A.'s death call back any part of the duty that had been paid.

(*s*) 7 Price 241. S. C. in Dom. Proc. 12 Price 213.

Exchequer held, that the duty on that particular legacy must be paid out of the real fund, and not out of the *personalty; the exemption from the duty being an augmentation of the legacy, and therefore payable out of the specific fund (*t*).

Limitation of time in recovering legacy and succession duties.

It may here be convenient to notice that by recent statutes certain limitations of time have been imposed on the right of the crown to recover legacy and succession duties. Thus by 52 & 53 Vict. c. 7, s. 14, it is provided that no person shall, under a testamentary document admitted to probate, or under letters of administration, or under a confirmation, be liable for payment of any legacy, succession, or estate duty, after six years from the settlement of the account in respect of which the duty is payable, where such account was in all respects a full and true account. And further that trustees, executors and administrators, are not to be liable after six years if it be proved to the commissioners that the account rendered was correct to the best of their knowledge.

By sect. 13 of 52 & 53 Vict. c. 7, it is provided that:—

Power to deposit copies of documents and liability to duty to cease after specified period.

(1.) A person may deposit with the commissioners an attested copy of any document creating a liability for succession or estate duty, other than a testamentary one admitted to probate.

(2.) A receipt is to be given by the officer of the commissioners for such document.

(3.) After such a receipt has been given for a copy of such a document, no person is to be liable for duty under it after six years from the date of notice to the commissioners of the fact which gives rise to an immediate claim to such duty.

(4.) The costs of depositing the copy and obtaining the receipt are to be considered duly incurred by the trustee or executor.

By 52 & 53 Vict. c. 7, s. 12, it is provided that (1) notwithstanding sect. 42, and any other provision of the act of 1853, real property estates and interests shall not be liable as against *purchasers or mortgagees for succession or estate duty after six years from the date of notice to the commissioners that the successor has become entitled, or from that of the first payment of an installment or part of the duty or (where the successor has availed himself of the option given by 51

(*t*) See also Stow *v.* Davenport, *ante*, p. *1508. Wilkinson *v.* Barber, L. R. 14 Eq. 96. Farrer *v.* St. Catherine's College, L. R. 16 Eq. 19. Wilson *v.* O'Leary, L. R. 17 Eq. 419.

& 52 Vict. c. 8, s. 22), after two years from the time for payment of the last installment or part of the duty, or in the absence of any such notice or payment after the lapse of twelve years from the happening of the event (whether before or after the passing of this act) which gave rise to an immediate claim to such duty, or if such period expires within six years from the date of the passing of the act, then after the expiration of six years from the last-mentioned date.

(2.) The duty unpaid at the end of such periods shall be paid by the successor or persons mentioned in sect. 44 of the act of 1853, other than the purchaser or mortgagee, and be charged upon other property comprised in the succession (unless vested in the purchaser or mortgagee), and in the case of a mortgage upon the equity of redemption.

(3.) A purchaser or mortgagee shall not for the purpose of obtaining the exemption be bound to see that the duty is discharged out of the purchase-money or loan.

*PART THE FOURTH.

OF THE LIABILITIES OF AN EXECUTOR OR ADMINISTRATOR.

BOOK THE FIRST.

OF ASSETS.

Having investigated in a former part of this work the quantity of the estate which devolves to an executor or administrator, it remains, 1st, to consider what portion of that property is regarded in law as applicable by him to the satisfaction of the different claimants on the estate in his hands, as well upon valuable consideration as volunteers: and, 2ndly, to complete the examination already commenced in an earlier stage of this treatise (*a*), of the order in which that application must be made, with reference to the priority subsisting among the claimants (*b*).

The property which will be the subject of these two inquiries, is called *assets* in the hands of the executor or administrator, that is sufficient, from the French *assez*, to make him chargeable to a creditor, and a legatee or party in distribution, so far as such property extends.

This portion of the estate of the deceased is sometimes designated by the older writers by the term "*assets enter mains*," in contradistinction to "*assets per descent*," by which last expression is denoted that portion which descends to the heir, and which is sufficient to charge him, as far as it goes, with specialty debts of his ancestor.

(*a*) *Ante*, p. *850 *et seq.*

(*b*) This subject is of less importance than formerly by reason of the priority of specialty debts having been taken away by 32 & 33 Vict. c. 46.

*CHAPTER THE FIRST.

OF PERSONAL ASSETS, LEGAL OR EQUITABLE.†

What shall be said to be assets in the hands of an executor:

The general rule with respect to what shall be said to be assets in the hands of an executor or administrator to charge him, is thus laid down in a book of authority (*a*): "All those goods and chattels, actions and commodities, which were of the deceased in right of action or possession as his own, and so continued to the time of his death, and which after his death the executor or administrator doth get into his hands as duly belonging to him in the right of his executorship or administratorship, and all such things as do come to the executor or administrator in lieu or by reason of that, and nothing else, shall be said to be assets in the hands of the executor or administrator to make him chargeable to a creditor or legatee."

assets which were never in the testator:

There are many instances in which property in the hands of an executor, is regarded as assets, although it was never in the testator: Thus if an executor renew a lease, he shall account for the new lease, as well as the old, as assets (*b*); *and this even though the new lease to the executor may comprise additional property to that included in the testator's lease and at an increased rent (*c*). So if A. covenants with B. to make

† See American note at end of this chapter.

(*a*) Touchst. 496.

(*b*) Anon. 2 Ch. Cas. 208. Bromfield v. Chichester, 2 Dick. 480. James *v.* Dean, 11 Ves. 392. Randall *v.* Russell, 3 Meriv. 190. See also Fitzroy *v.* Howard, 3 Russ. C. C. 225. Giddings *v.* Giddings, *ibid.* 241. Fosbrooke *v.* Balguy, 1 M. & K. 226. Again, where the executor or administrator carries on the trade of the testator or intestate, and buys stock or material for the purpose of such trade, the stock or materials as between the personal representative and the estate will belong to the estate, subject to the personal representative's right to indemnity, Re Evans, 34 C. D. 597; and will become part of the general estate even as against trade creditors, unless a testator has expressly directed that the trade shall be carried on, and appropriated a part of his property for the purpose. In such cases the executor doing no more than his duty will be entitled to be indemnified, and the trade creditors will have the benefit of this indemnity. *Ex parte* Garland, 10 Ves. 110. Re Johnson, 15 C. D. 548. And see *post*, p. *1682.

(*c*) Re Morgan, 18 C. D. 93.

him a lease of certain land by such a day, and B. dies before the day, and before any lease made, A. is bound to make the lease to the executor of B., and the lease so made shall be assets in his hands; or if A. refuses to grant the lease, he is liable to make the executor a compensation in damages, which are also assets (*d*). So if A. promises, on good consideration, to deliver to B. by such a day certain wares or merchandises, and this is not performed in the life of B., but delivery is made to his executor, the goods will be assets in his hands, as well as the money recovered in damages, for not performing, would have been (*e*).

by contract:

Again, chattels which were never vested in the testator in possession, but accrue to the executor by remainder, will be assets in his hands: Thus, if a lease be made to one for life, remainder to his executor for years (*f*), such remainder will be assets in the hands of the executor, though it were never in the testator (*g*). So where a lease for years is bequeathed to A. for life, and afterward to B., who dies before A., although B. never had this term in him, it shall be assets in the hands of his executor (*h*). So a remainder in a term for years, though it never vested in the testator's possession, and though it still continue a remainder, shall be assets in the hands of the executor; for it bears a present value, and is vendible (*i*).

by remainder:

So goods which have accrued by increase since the testator's death are assets in the hands of the executor: Thus if the sheep or other cattle of the testator bear lambs, &c., *after the testator's death, these, although never the property of the testator, will be assets (*j*). So if the executor of a lessee for years enter into the tenements, the profits, over and above the rent, shall be assets (*k*). Therefore, if an executor has a lease for years of land of the value of 20*l.* a year, rendering rent of 10*l.* a year, it is assets in his hands only for 10*l.* over and above the rent (*l*). Again, if an executor em-

by increase:

(*d*) Wentw. Off. Ex. 188, 14th edit. Chapman *v.* Dalton, Plowd. 286. Com. Dig. Assets, (C).

(*e*) Wentw. Off. Ex. 188, 14th edit. Com. Dig. Assets, (C).

(*f*) See *ante*, p. *614 *et seq.*

(*g*) Went. Off. Ex. 189, 14th edit. Com. Dig. Assets, (C).

(*h*) *Ibid.*

(*i*) *Ibid.*

(*j*) Wentw. Off. Ex. 190, 14th edit.

[*1520]

(*k*) Buckley *v.* Pirk, 1 Salk. 79. Wentw. Off. Ex. 190, 191, 14th edit. But the profits, as far as the amount of the rent, are received by the executor as tertenant, and appropriated to the use of the lessor: 1 Salk. 79. See *post*, p. *1637.

(*l*) Body *v.* Hargrave, Cro. Eliz. 712. Godolph. Pt. 2, c. 24, s. 1. A leasehold estate though not sold is assets, *ad valorem:* Jury *v.* Woodhouse, Barnes, 333. Vincent *v.* Sharpe, 2 Stark. 507.

ploy the testator's goods in trade, the profits shall be assets (*m*): And whether the executor takes upon himself to carry on the testator's trade, or does so in pursuance of a provision in articles of partnership entered into by the deceased (*n*), or by direction of the testator, contained in his will, or under the direction of the Court of Chancery, the profits of such trade shall be assets, for which he shall be accountable. Thus in Gibblett *v.* Read (*o*), Lord Hardwicke held, that a share in a newspaper should be considered as the personal property of the deceased, transmissible to his representatives, and that the profits of printing the same subsequent to his death should be distributed accordingly. And his lordship said, that there were many cases where no part of the property of a testator had been employed or made use of in carrying on the business, and yet the executor *had been held accountable for the profits of the business as the testator's personal estate (*p*); as in the instance of physical secrets or nostrums, where everything was carried on with materials purchased after the testator's death, and yet the nostrum was part of the personal estate of the testator (*q*). *So, in Pitt *v.*

(*m*) Godolph. Pt. 2, c. 24, s. 4. Com. Dig. Assets, (C). See *post*, p. *1752.

(*n*) Generally speaking, the death of a partner, of itself, dissolves the partnership: Vulliamy *v.* Noble, 3 Meriv. 614: And even where the partners have covenanted that they and their respective executors shall continue partners for a certain time yet unexpired, the executors of the late partner are entitled to a decree for a dissolution, subject to their liability to damages recoverable in an action by the surviving partners, for a breach of the covenant: Downs *v.* Collins, 6 Hare, 418.

(*o*) 9 Mod. 459.

(*p*) See also Moseley *v.* Rendell, L. R. 6 Q. B. 338. Abbott *v.* Parfitt, L. R. 6 Q. B. 346.

(*q*) His lordship further observed that if the house of the testator were a house of great trade, the executor must account for the value of what is called the good-will of it. See also Worral *v.* Hand, Peake, N. P. C. 74, *Acc.* So an assignment by deed of the good-will of a trade has been held to be a conveyance of "property" within the Stamp Act: Potter *v.* Commissioners of Inland Revenue, 10 Exch. 147. But in Spicer *v.* James, Rolls, M. T. 1830, cited in Collyer on Partnership, p. 82, where an attorney having died intestate, another attorney, a friend of the family, by arrangement with the widow, took out administration, and continued the business of the deceased until her son came of age; paying the widow half the profits; Sir J. Leach held, that the good-will of a trade of a personal nature, as that of an attorney, was not a subject of administration and was not assets in the hands of the administrator. [See, however, *contra*, Smale *v.* Graves, 3 De G. & Sm. 706.] With respect to the good-will of a business, in which several are partners, it seems that, as to a partnership between professional persons, on the death of one,

[*1521] [*1522]

Pitt (*r*), the administratrix of a deceased ropemaker in the king's yard at Woolwich was cited in the Prerogative Court of Canterbury, to exhibit an inventory and account: The deceased had four apprentices; and the question was, whether the administratrix was bound to insert in the inventory the amount of the wages earned by them, in the yard of the deceased, since his death: And Sir G. Lee was clearly of opinion, that she, who did not belong to the yard, could have apprentices there only as administratrix to the deceased; and the learned judge accordingly decreed her to charge herself with the profits arising from the apprentices.

by condition:

So chattels, real or personal, to which the executor becomes entitled, after the death of the testator, by force of a condition, will be assets: As where a lease for years, or cattle, plate, or other chattel, was granted by the testator, upon condition that if the grantee did not pay such a sum of money, or do other acts, &c., and this condition is broken or not performed after the testator's death, the chattel will be brought back to the executor, and be assets (*s*.) The law is the same where the condition is, that the testator shall pay money or do any other act to avoid the grant: Accordingly, it has been decided, that chattels, whether real or personal, mortgaged or pledged by the testator, and redeemed by the executor, shall be assets in the hands of the executor, for so much as they are worth

the good-will shall survive to the other, although the deceased paid a large premium on entering into the partnership: Farr *v.* Pearce, 3 Madd. 78. But whether this survivorship of the good-will exists in the case of commercial partnerships, has been questioned. In Hammond *v.* Douglas, 5 Ves. 539, Lord Loughborough determined that the good-will of a trade carried on in partnership without articles, survives, and is not partnership stock: But in Crawshay *v.* Collins, 15 Ves. 227, Lord Eldon doubted the propriety of that decision: See also Featherstonhaugh *v.* Fenwick, 17 Ves. 298. Wedderburn *v.* Wedderburn, 22 Beav. 84, 104, in which last case it was laid down by Romilly, M. R., that the good-will does not survive unless by express agreement. See also *Accord.* Smith *v.* Everett, 27 Beav. 446. But though these cases establish that the good-will is a valuable and tangible thing in some cases, yet the legatee of the share of the mere good-will of a deceased partner cannot support a bill against the surviving partner to obtain the benefit of his legacy, even after assent by the executor: Robinson *v.* Quiddington, 28 Beav. 529. In a suit for the general administration of assets, if it be ascertained that the executors have been able so to deal with the business, as to make something of the good-will, the legatee may have a right to be paid in respect of his interest in it: *Ibid.* Other cases on the subject of the good-will of a partnership business will be found collected and commented on in the Jurist of Dec. 2, 1865.

(*r*) 2 Cas. temp. Lee, 508.

(*s*) Wentw. Off. Ex. 181, 14th edit.

beyond the sum paid on their redemption (*t*). And it was held at N. P. by Abbot, C. J. (*u*), *that a lease which belonged to an intestate, upon which the plaintiff had a lien, on account of which he retained it in his hands, was nevertheless to be considered as assets in the hands of the administrator, who had the power to redeem it. But if the executor redeem with his own money the goods pledged by the testator, he shall be indemnified in respect to the sum he has disbursed out of the effects of the testator, or, if necessary, by the sale of the chattel itself; and in that case the surplus over and above such indemnity shall be assets (*x*). In case he have no fund as executor, and he advance the money out of his own purse for the redemption, and it be fully equivalent to the value of the chattel, the property is altered by such payment, and shall be vested in the executor as a purchaser in his own right (*y*). But if the executor redeem the chattel after the time specified for redemption is elapsed, then it is said that the chattel, without any distinction in respect to its value, shall at law belong to the executor in his own right; since in such case it must be deemed to be sold to him by the mortgagee or pawnee, who, after the forfeiture is incurred, has a legal right to dispose of it at his pleasure to him, or to any other person: But in equity, the excess in the value of the thing beyond the money paid for the redemption shall be regarded as assets in the hands of the executor (*z*).

"Assets in any part of the world," says the author of the "Touch-

(*t*) Went. Off. Ex. 182, 14th edit. Hawkins *v.* Lawse, 1 Leon. 155. Harecourt *v.* Wrenham, or Harwood *v.* Wrayman, Moore, 858. 1 Roll. Rep. 56, pl. 32. 1 Brownl. 76. 1 Roll. Abr. 920, (G.) pl. 5. Alexander *v.* Lady Gresham, 1 Leon. 225. A testator being indebted to R., deposited with him a policy of insurance on the testator's life, as security for the debt, and for a further advance then made by R.; and died, leaving R. and M. his executors: R. still holding the policy, applied to the insurers for the amount due on it (200*l.*), which they refused to pay unless R. & M. gave a receipt for it as executors: They did so, R. making protest that he signed as executor, merely to satisfy the insurers: In an action by a judgment creditor, the executors pleaded *plene administraverunt* except as to 4*l.* (the surplus out of the 200*l.* after payment to R.): And the Court of K. B. held, that the executors were not chargeable with the 200*l.* as assets, but only with the surplus after payment to R.: Glaholm *v.* Rowntree, 6 Ad. & Ell. 710.

(*u*) Vincent *v.* Sharpe, 2 Stark. N. P. C. 507.

(*x*) Wentw. Off. Ex. 182, 14th edit.

(*y*) Anon. Dyer, 2 a. pl. 3. Wentw. Off. Ex. 182, 14th. edit.

(*z*) Wentw. Off. Ex. 186, 187, 14th edit.

[*1523]

stone" (*a*), "shall be said to be assets in every part of the world." †

property of the testator shall be assets in whatever part of the world they are situate:

So it was laid down by Lord Lyndhurst, in delivering the judgment of the Barons of the Exchequer in *The Attorney-General *v.* Dimond (*b*), that "the effects of the testator are assets wherever situated, whether at home or abroad; and such effects as are in a foreign country at the time of the testator's death, although they remain and are wholly administered there by the executor, are equally assets." Again, it was laid down by Bayley, B., in the case Re Ewin (*c*), that if the testator or intestate dies entitled to stock in the French or other foreign funds, and there is a deficiency of assets in this country to meet the debts of the deceased, it is the duty of the executor or administrator, to sell the stock, and bring the proceeds into this country, in order to satisfy the creditors: and if he neglects to do so, he will be guilty of a *devastavit* (*d*). Accordingly, as early as the reign of James I., in Dowdale's Case (*e*), where the jury found that assets within the kingdom of Ireland came to the hands of the executor, it was resolved that the finding the assets to be beyond sea, was surplusage; for that if executors have goods of their testators in any part of the world, they shall be charged in respect of them; since many merchants and other men, who have goods to a great value beyond sea, are indebted here in England: and it would be a great defect in the law, that those goods should not be liable to their debts.

But this doctrine has been questioned. In "Story's Conflict of Laws" (*f*), that eminent writer, in commenting on the resolution in Dowdale's Case, says, "This language, in its broad import, is certainly unmaintainable in our day; for it goes to the extent of making a domestic executor or administrator liable for all assets of the testator or intestate which *are locally situate abroad; although (as it has appeared in an earlier part of this work (*g*), he has not, in

† See American note at end of this chapter.

(*a*) Touchst. p. 496.

(*b*) 1 Crompt. & Jerv. 370.

(*c*) *Ibid.:* 151.

(*d*) So it has been laid down that a leasehold estate for years in Ireland is personal assets in England, and may be sold here by the executor: Bligh *v.* Lord Darnley, 2 P. Wms. 622. And where there was a question as to the quality of an estate in land situate in a foreign country, the Court of Chancery referred it to a Master, to inquire whether the testator's interest in it was in its nature real or personal: Gardiner *v.* Fell, 1 Jac. & Walk. 24.

(*e*) 6 Co. 47 b. S. C. Cro. Jac. 55.

(*f*) Ch. xiii. s. 514, a.

(*g*) See *Ante*, pp. *300, *365.

[*1524] [*1525]

virtue of the domestic letters of administration, any authority to collect them, or to compel payment or delivery thereof to himself."

In Dowdale's Case, it will be observed, the foreign assets had actually come to the hands of the executor; so that the more general question, embraced by the terms of the resolution, did not, in truth, arise. But Mr. Justice Story doubts the authority of the case, even in the aspect which the actual facts of it present; observing that according to the doctrine maintained in England in modern times, the executor was not at all liable to be sued in England as executor under letters testamentary taken out in Ireland; and *a fortiori* not for assets received and administered in Ireland under that appointment: And that learned commentator considers it as at least a doubtful question, whether if an executor or administrator, appointed in the country where the deceased died, should collect assets in a foreign country without obtaining a grant of administration there, the assets so received would constitute a part of the home assets which he would be bound to administer, and for which he would be liable to account under the domestic administration according to the domestic laws.

Administration granted in different countries: principal administration that granted by country of domicil: estate must be administered in the country where possession is taken.

It has certainly been established (as there has already been occasion to show) (*h*), that although where different administrations are granted in different countries, that administration is deemed the principal or primary one which is granted in the country of the domicil of the deceased, yet each portion of the estate must be administered in the country in which possession of it is taken and held under lawful authority: And that the administrator under a foreign grant has a right to hold the assets received under it against the home administrator, even after they have been remitted to this country (*i*). The only mode, it seems, of reaching such assets *is to re-

(*h*) *Ante*, pp. *365, *366.

(*i*) *Ante*, pp. *365, *366, *1389. Story's Confl. ch. xiii. s. 518. See, however, Sandilands v. Innes, 3 Sim. 263. In that case it appeared, that Erskine Nimmo died intestate at Madras; and William Fairlie, a creditor of the deceased, took out letters of administration to him in the Supreme Court there: Fairlie afterward came to England, and obtained letters from the Prerogative Court of Canterbury: Afterward one of the intestate's next of kin procured the latter administration to be revoked, and letters to be granted to himself: He then filed a bill against Fairlie, praying for an account of the effects of the intestate, both in India and in this country, which had been possessed by Fairlie: It was objected,

[*1526]

quire their transmission or distribution, after all the claims against the foreign administration have been duly ascertained or settled (*k*).

Relation of principal administration to that granted in foreign country.

Again, though the right of the home executor or administrator to an ancillary probate or grant of administration in a foreign country is usually admitted, by the comity of nations, as a matter of course (*l*), yet this new administration is made subservient to the rights of creditors and other claimants resident within the country where it is granted; and the *residuum* is transmissible to the country of the original administration only when a final account has been settled in the proper tribunal where the new administration is granted, upon the equitable principles adopted by its own law, in the application and distribution of the assets found within its jurisdiction (*m*).

Liability of executor to account for assets out of England.

The liability of an executor or administrator to account for assets out of England would seem to depend upon his relation to the foreign assets. It would seem from the decision in *Ewing *v.* Orr-Ewing (*n*), that where the same person has vested in him English and foreign assets, then, whether the English administration be major or minor, principal or ancillary, the English courts of equity, if called upon so to do by a person entitled to claim in the administration, will, if the administrator be within the jurisdiction, judicially administer the whole of the assets vested in him. In a case where one has not only identity of trustees with the legal personal representatives here and abroad and unity of the trust which they have to perform, as was the case in Ewing *v.* Orr-Ewing, there is no difficulty, and the whole estate can be administered, as regards both English and

that the bill being filed by the plaintiff in the character of personal representative only of the deceased, and not also as one of the next of kin, he was not entitled to sue for an account of the assets of the deceased possessed by Fairlie in India, but only of the assets possessed by him in this country: Sir L. Shadwell, V.-C., said, that if Fairlie had brought any of the intestate's assets from India to this country, the plaintiff would clearly be entitled to have an account taken as to them; and that the taking of that account would, incidentally, make it necessary to have an account taken of all the assets possessed by Fairlie or his agents in India. See also Hervey *v.* Fitzpatrick, Kay, 421. *Ante*, p. *369. Maclaren *v.* Stainton, 16 Beav. 279.

[*1527]

(*k*) Story's Confl. ch. xiii. s. 518. *Ante*, p. *852.

(*l*) See *ante*, pp. *301, *365 (*h*).

(*m*) Eames *v.* Hacon, 18 C. D. 347. Story's Confl. ch. xiii. s. 513. *Ante*, p. *852.

(*n*) 9 A. C. 34.

foreign assets, in the English courts; where, however, the only title of the English personal representative is under an English probate or letters of administration to the English assets, the administration, beyond that which is necessary for the payment of English creditors, may not conveniently be conducted by the English courts, especially if the deceased is of foreign domicil and those entitled to the surplus of his estate after the payment of his debts are foreigners; in such a case the surplus of English assets after payment of all debts proved in England, might properly be ordered to be paid over to the administrator in the country of the deceased's domicil. Where, however, the deceased is of English domicile, the English courts assume the power to make a general decree for administration of the whole estate of any testator or intestate who may have died leaving assets in several countries in respect of which several grants of probate or administration (whether principal or ancillary) might have been obtained, working out such a decree in the best way practicable as to assets not within the local jurisdiction. Lord Selborne in delivering his opinion in the House of Lords in Ewing *v.* Orr-Ewing (*o*), cited with approval the 589th section of Story on Equity Jurisprudence, Chap. IX.: "Courts of Equity of the country where the ancillary administration is granted *(and other Courts, exercising a like jurisdiction in cases of administration), are not incompetent to act upon such matters, and to decree a final distribution of the assets to and among the various claimants having equities or rights in the funds, whatever may be their domicil, whether it be that of the testator or intestate, or be in some other foreign country. The question whether the Court, entertaining the suit for such a purpose, ought to decree such a distribution, or to remit the property to the forum of the domicil of the party deceased, is treated, not so much as a matter of jurisdiction, as of judicial discretion, dependent upon the particular circumstances of each case. There can be, and ought to be, no universal rule on the subject. But every nation is bound to lend the aid of its own judicial tribunals for the purpose of enforcing the rights of all persons having a title to the fund, when such interference will not be productive of injustice, or inconvenience, or conflicting equities, which may call upon such tribunals for abstinence in the exercise of their jurisdiction." But, as already stated, wherever there are two sets of personal representatives, one appointed by the tribunal of the country where the tes-

(*o*) 10 A. C. 514.

[*1528]

tator was domiciled, and another, and a different set of persons, appointed representatives in another country where there happens to be personal estate, questions will arise as to what are the rights of the executors in the country of the domicil as against the ancillary administrator, and when, and at what stage, the trustees and executors of the country of domicile require the ancillary administrator to hand over to them the assets collected under the ancillary administration (*p*). It would seem that wherever you have assets within the jurisdiction, and a person accountable for those assets also within the jurisdiction, a Court of Equity will, if called upon so to do, make a general decree for judicial administration, even though there may be assets abroad and the deceased be of foreign domicil, but that the English courts in the course of the *English action will not allow proceedings to be carried further than is convenient according to the comity of courts, and would adopt the proceedings of the courts of the country of the domicil of the deceased according to the necessities and exigencies of the case (*q*). The English court could, of course, if there was pending a suit in the courts of the country of the deceased's domicil, in which all questions, which could arise in the course of the administration, could be decided, stay the English action and prevent it going on here vexatiously and unnecessarily (*r*).

Duty of personal representative of person with foreign domicil acting in this country under subsidiary grant of administration.

It has sometimes been asserted that the duty of the personal representative of a deceased of foreign domicil acting here under a subsidiary grant of administration is to pay the creditors and duties in the state under whose authority he is acting, and to remit the balance to the personal representative in the state or country of the domicil of the deceased, and an argument is sought to be based on this assertion that the courts of a country other than that of the domicil of the deceased ought not to judicially administer assets not comprised in the subsidiary grant, even though the administrator or trustee of these goods happen himself to be within the jurisdiction of the courts of the country from which the subsidiary grant issues and amenable to it. The case, however, of Re Kloebe (*s*) seems to show that the assertion on

(*p*) See *per* Cotton, L.J., in Re Orr-Ewing, 22 C. D. 456, 467.

(*q*) Stirling Maxwell *v.* Cartwright, 11 C. D. 522.

(*r*) See *per* Cotton, L.J., in Re Orr-Ewing, 22 C. D. 456, 469.

(*s*) 28 C. D. 175.

[*1529]

which the argument is founded is itself without foundation, for it was decided in that case by Pearson, J., that in the administration of the English estate of a deceased domiciled abroad, foreign creditors are entitled to dividends *pari passu* with English creditors. In the case of Re Boyse (*t*), it was held by Malins, V.-C., that although judgment has been given for the administration of an estate, the court has no power to restrain a foreign creditor from proceeding in a foreign court against the administrator; *but that if judgment were obtained in the foreign court against the administrator by default, it would only be treated in the administration action as *prima facie* evidence of the debt.

Generally nothing which is assets can be recovered by process of law, except by the administrator acting under the authority issuing out of the court whose process is sought to be enforced (*u*); but there are some apparent exceptions to that rule: one is where assets have come into the jurisdiction by being remitted to the agent of a foreign administrator: in such a case the foreign administrator may sue his agent without taking out letters of administration in the country to the forum of which he is resorting. Thus, in Eames *v.* Hacon (*x*), where an intestate died domiciled in Ireland, and letters of administration were granted in Ireland, and the Irish administratrix instructed her attorneys to procure letters of administration in India for her use and benefit, and they did so, and having received the Indian assets, and paid the Indian debts, and remitted the net proceeds to their agents in England, it was said by Jessel, M.R., and Baggallay, L.J., that the Irish administratrix would have been entitled to sue the agents in England even if she had not had the Irish letters of administration resealed. Again, in Re Macnichol (*y*), it was held that where judgment had been obtained in a foreign court by the foreign administrator of a creditor against an English debtor who had since died and whose estate was being administered in England, that the foreign administrator could prove without taking out English administration to his intestate.

If, however, the English courts do undertake the judicial administration of assets of a deceased person of foreign domicil, they will administer such assets generally, as far as they can ascertain the law, according to the law of the deceased's domicil the *lex domicilii*,

(*t*) 15 C. D. 591.

(*u*) Fernandes' Executors' case, L. R. 5 Ch. 314.

(*x*) 18 C. D. 347.

(*y*) L.R. 19 Eq. 81.

[*1530]

but the priorities of *creditors will be governed by the *lex fori*.

Law governing administration of assets of deceased person with foreign domicil.

Thus, in Blackwood *v.* The Queen (*z*), it was held by the Privy Council that although the law of the testator's domicil governs the foreign personal assets of his estate for the purpose of succession and enjoyment, yet those assets are for the purpose of legal representation, of collection and administration, as distinguished from distribution among the successors, governed by the law of their own locality, and not by that of the testator's domicil.

5 Geo. 2, c. 7. Land, houses, negroes, &c., in the plantations:

By the statute 5 Geo. II. c. 7, s. 4 (*a*), it is enacted, that "the houses, lands, negroes, and other hereditaments and real estates, situate or being within any of the said plantations [British plantations in America] belonging to any person indebted, shall be liable to and chargeable with all just debts, duties, and demands of what nature or kind soever, owing by any such person to his Majesty, or any of his subjects, and shall and may be assets for the satisfaction thereof, in like manner as real estates are by the law of England liable to the satisfaction of debts due by bond or other specialty, and shall be subject to the like remedies, proceedings, and process in any Court of law or equity, in any of the said plantations respectively for seizing, extending, selling, or disposing of any such houses, lands, negroes, and other hereditaments and real estates toward the satisfaction of such debts, duties, and demands, and in like manner as personal estates in any of the said plantations respectively are seized, extended, sold, or disposed of, for the satisfaction of debts."

In the case of Thomson *v.* Grant (*b*), Alexander Donaldson devised plantations in Jamaica to several trustees, whom also he appointed his executors: Of these, Thomson alone proved the will in the Prerogative Court of Canterbury; and Grant, Campbell, Meekin, and Green proved it in Jamaica; Thomson died, and Grant, who was one of his executors, *proved his will here in the Prerogative Court: Both Thomson and Grant were creditors of Donaldson to a large amount: In a suit which was instituted by Thomson on behalf of himself and other creditors, for the administration of Donaldson's

(*z*) 8 A. C. 82.

(*a*) This act has been repealed by Stat. Law Rev. Act, 1887. It had been already repealed as to negroes by stat. 37, Geo. 3, c. 119. The compensation fund for slaves in Jamaica was held to be legal assets in Lyon *v.* Colville, 1 Coll. 449.

(*b*) 1 Russ. Chanc. Cas. 540, note to Player *v.* Foxhall.

estate, and which was afterward revived by Grant, the devise of the plantations had been declared fraudulent as against creditors, and Grant had been appointed consignee: Grant then claimed to be entitled to retain, in priority to the other creditors, out of the balances in his hands as consignee, both the debt due from Donaldson to him individually, and also the debt due to him as the executor of Thomson: And Sir Thomas Plumer, M.R., held that Grant was entitled as executor to retain both debts out of the balances in question: His Honor said that the executor's right of retainer over personal property was clear; and by the Act of Geo. II., plantations in Jamaica are converted, with respect to the payment of debts, into personal assets, and, as such, are possessed by the executor: Grant, therefore, was in a situation in which he could not sue either for the debt due to himself personally, or for that which he, as the executor of Thomson, had the sole legal right to demand: His coming over to this country, and acting as consignee, could not take away from him a right which attached on the property in his hands: That property was personal assets, and in all respects to be administered as such: In the character of consignee he retained only the charges incident to that situation: As an executor, he was entitled to retain both debts (*c*).

It seems that even before this statute, it was held that a foreign plantation, though an inheritance, yet being in a foreign country, was to be looked upon as a chattel to pay debts, and a testamentary thing (*d*).

It was held, however, in Charlton *v.* Wright (*e*), that not*withstanding West India estates are made legal assets by this statute, they may be devised so as to make them equitable assets. But this was afterward overruled in the Privy Council, in Turner *v.* Cox (*f*).

By statute 9 Geo. IV. c. 33 (*ff*), after reciting that doubts have arisen whether and to what extent the real estates of British subjects and others (not being Mahomedans or Gentoos), situate within the jurisdiction of his Majesty's Supreme Courts of Judicature in India, are liable as assets in the hands of

9 Geo. 4, c. 33.

(*c*) See also Manning *v.* Spooner, 3 Ves. 118.

(*d*) Noel *v.* Robinson, 2 Ventr. 358. See also Blankard *v.* Galdy, 4 Mod. 226.

(*e*) 12 Sim. 274. See also Lyon *v.* Colville, 1 Coll. 449, 472.

(*f*) 8 Moo. P. C. 288.

(*ff*) Repealed except as to estates of persons dying before 1 Jan. 1866, by Stat. Law Rev. Act, 1873.

executors and administrators, to the payment of the debts of their deceased owners, it is declared and enacted, "that whenever any British subject shall die seised of or entitled to any real estate in houses, lands, or hereditaments, situate within or being under the general civil jurisdiction of his Majesty's Supreme Court of Judicature at Fort William, in Bengal, Fort St. George, and Bombay respectively, or whenever any person (not being a Mahomedan or Gentoo) shall die seised of or entitled to any such real estate, situate within the local limits of the civil jurisdiction of the same Courts respectively, such real estate of such British subject or other person as aforesaid (not being a Mahomedan or Gentoo) is and shall be deemed assets in the hands of his or her executor and administrator, for the payment of his or her debts, whether by specialty or simple contract, in the ordinary course of administration" (*g*).

Whenever any British subjects or persons not being Mahomedans or Gentoos, shall die, entitled to any real estate in India, such estate shall be deemed assets

Section 2 declares and enacts that the executor, &c., may sell such real estate for the payment of the debts, and make a good title to a purchaser.

executors may sell such real estate for the payment of debts:

By section 3, "In any suit or action to be commenced and prosecuted in any of the said Courts respectively, against such executor or administrator as aforesaid, for the recovery of any debt or demand due and owing by such testator or *intestate in his lifetime, and at the time of his death, such executor or administrator shall and may be charged with the full amount in value of such real estate as aforesaid, not exceeding the actual net proceeds of such estate when sold by the sheriff, as assets in the hands of such executor or administrator to be administered."

in any action for debt, the executor may be charged with the full amount of such real estate:

The general rule has long been established, that an executor or administrator shall not be charged with any other goods as assets than those *which come to his hands* (*h*).† But considerable difficulty exists in ascertaining what is to be esteemed such a coming to the hands of the executor or administrator: It is said in "Wentworth's Office of an

What assets shall be considered as *come to hand* so as to charge the executor:

† See American note at end of this chapter.

(*g*) Real estate in India being made by this statute personal assets, it is unnecessary to make the heir a party to an administration suit: Story *v.* Fry, 1 Y. & Coll. Ch. C. 603.

(*h*) Read's case, 5 Co. 33, b. 34, a.

[*1534]

Executor" (*i*) that if the testator at the time of his death has a stock of sheep in Cumberland, bullocks in Wales, fat oxen in Bucks, money, household stuff, and plate in London, and his executor dwells at Coventry, *viz.*, far from all these places, the executor has such an actual possession presently upon the testator's death, that he may maintain trespass against any stranger taking them away or spoiling them; and, therefore, that author considers it doubtful whether this shall not be such a possession in the executor, and such a coming of these goods to his hands as to charge him with payment of debts and legacies, and make his own goods liable instead of them. However, it was laid down by Lord Holt, in Jenkins *v.* Plombe (*k*), that if an executor live at London, and the goods of which the testator died possessed are at Bristol, although the executor has such an immediate possession of them that he may maintain trover in his own name against any converter of them, and the damages recovered shall be assets in his hands, yet if he do not recover so much in damages as really the goods were worth, and that happens not through any fault of his, he shall answer for no more than he recovers (*l*).

*Again, upon the supposition that goods come fully into the possession and hands of an executor or administrator, but are afterward wrongfully taken from him, a question arises whether such goods shall be considered assets in his hands: There are some authorities for asserting that things taken out of the possession of the executor are assets in his hands (*m*), unless they were taken by the Queen's enemies (*n*). But it should seem, that an executor or administrator stands in the condition of a gratuitous bailee; with respect to whom the law is, that he is not to be charged without some default in him (*o*): Therefore, if any goods of the testator are stolen from the possession of the executor, or from the possession of a third person, to whose custody they have been delivered by the executor, the latter shall not be charged with these as assets (*p*).

(*i*) P. 227, 14th edit.

(*k*) 6 Mod. 181.

(*l*) See also Com. Dig. Assets (D).

(*m*) Read's case, 5 Co. 34, a. Bethell *v.* Stanhope, Owen, 132.

(*n*) Wentw. Off. Ex. 234, 14th edit.

(*o*) Wentw. Off. Ex. 235, 14th edit. Com. Dig. Assets (D).

(*p*) Jones *v.* Lewis, 2 Ves. Sen. 240. Job *v.* Job, 6 C. D. 562. Wentw. Off. Ex. 236, 14th edit. Com. Dig. Assets (D). A contrary rule was said to prevail at law prior to the Judicature Act. See Crosse *v.* Smith, 7 East, 258, 259. Now, however, the rule at law and in equity is the same (Judic. Act, 1873, sect. 25, sub-sect. 11), and an executor is not chargeable except in the case of willful default: Job *v.* Job, *ubi sup.* See *post*, pp. *1704, *1705.

[*1535]

Again, if a trespasser takes goods out of the possession of an executor or administrator, although he is bound to sue the trespasser, if known, yet the executor or administrator shall not be answerable in assets for more than he recovers in the suit: But if he omits to sell the goods at a good price, and afterward they are taken from him, then the value of the goods shall be assets in his hands, and not what he recovers; for there was a default in him (*q*). Again, if the goods be perishable goods, and before any default in the executor to preserve them, or sell them at due value, they are impaired, he shall not answer for the first value, but shall give that *matter in evidence to discharge himself (*r*). So if the testator's sheep or other beast die, or if his ships perish by tempest, the executor shall not be charged with them as assets (*s*).

Choses in action how far assets.

With respect to that part of the estate of an executor or administrator which consists of *choses in action*,† the law has long been settled, that although debts of every description due to the testator are assets, yet the executor or administrator is not to be charged with them till he has received the money (*t*): So if the executor or administrator recovers any damages or compensation for any injury done to the personal estate of the testator before or since his decease, or for the breach of any covenant or contract made with the testator (*u*), or with himself in his representative character (*x*), all such damages thus recovered shall be assets in his hands, the costs and charges of recovering them being deducted (*y*): but he shall not be charged with them until he has reduced them into possession (*z*): Thus in Williams *v.* Innes (*a*), in order to prove assets in the hands of the defendants, who were

† See American note on p. *1726, *ubi infra.*

(*q*) Jenkins *v.* Plombe, 6 Mod. 181, 182. Wightwick *v.* Lord, 6 H. L. C. 234, 235, *per* Lord Wensleydale.

(*r*) Jenkins *v.* Plombe, 6 Mod. 181.

(*s*) Wentw. Off. Ex. 236, 14th edit. Com. Dig. Assets (D). *Post*, p. *1704.

(*t*) Com. Dig. Assets (D). Bac. Abr. Exors. (H) 2.

(*u*) Co. Lit. 144, a. 1 Roll. Abr. 920. Exors. (G), pl. 4, 5. Godolph. Pt. 2, c. 24, s. 1, 2. Bac. Abr. Exors. (H) 2. Com. Dig. Assets (C).

(*x*) See *ante*, p. *762 *et seq.*

(*y*) Wentw. Off. Ex. 191, 14th edit. If the testator recover a judgment for debt and costs, and his executor sue out a *sci. fa.* upon that judgment, the debt and costs due to the testator are assets when received; but the sum due for costs to the executor is only by way of indemnity to himself, and is not assets: *Per* Parke, B., in Smedley *v.* Philpot, 3 M. & W. 586.

(*z*) Godolph. Pt. 2, c. 24, s. 5. Jenkins *v.* Plombe, 1 Salk. 207. 11 Vin. Abr. 239, 240. See also Lowe *v.* Peskett, 16 C. B. 500.

(*a*) 1 Campb. 364.

executors, an account rendered by them was given in evidence, in which they stated that 1,000*l.* had been awarded as due to the testator's estate from a person who had been jointly concerned with him in underwriting policies of insurance: But Lord *Ellenborough held, that this was not sufficient proof of assets, as it did not show that any part of the sum awarded had been received by the executors.

But such debts or damages will be regarded as assets, although never, in point of fact, received, if they be released by the executor: for the release, in contemplation of law, shall amount to a receipt (*b*). So if the executor take an obligation in his own name for a debt due to the testator, he shall be equally chargeable as if he had received the money; for the new security has extinguished the old right, and is a *quasi* payment (*c*).

And it has been laid down, that where an executor sues for money had and received to his use as executor, the debt or damages is assets immediately: for if the money was had and received by the defendant, by the consent or appointment of the executor, it was assets in his hands forthwith; and if without his consent, yet the bringing the action is such a consent, that, upon judgment obtained, it shall be assets immediately, without execution (*d*).

This subject will be further discussed hereafter, when the nature of a *devastavit* by an executor or administrator is considered (*e*).

Next avoidance of a church.

There may be personal property of the testator or intestate, to which his personal representative, as such, is entitled, which is not assets in his hands, by reason of not being vendible: For example, the patron of a church grants to the testator the next avoidance, and the church becomes void; and the testator dies before he presents: After his death his executor presents, and has the benefit of preferring his son or his friend: Yet this shall make no assets in his hands; *because he could not lawfully take money to present (*f*). But if a stranger presents, and gets his clerk admitted, and the executor recovers damages in a

(*b*) Cocke *v.* Jenner, Hob. 66. Brightman *v.* Keighley, Cro. Eliz. 43.

(*c*) Norden *v.* Levit, 2 Lev. 189. Hosier *v.* Arundell, 3 Bos. & Pull. 7. Partridge *v.* Court, 5 Price, 419, 420, 421. Sparkes *v.* Restal, 22 Beav. 587.

(*d*) Jenkins *v.* Plombe, 1 Salk. 207. S. C. 6 Mod. 181.

(*e*) *Infra*, Pt. IV. Bk. II. Ch. II. § II., p. *1690 *et seq.*

(*f*) Wentw. Off. Ex. 173, 14th edit. Godolph. Pt. 2, c. 24, s. 8. See also Lord Tenterden's judgment in Rennell *v.* Bishop of Lincoln, 7 B. & C. 195.

[*1537] [*1538]

quare impedit, the money so recovered will be assets (*g*): And if the testator had died before the church had become void, then, because the executor might lawfully have sold it, it should seem that he will be charged with the value as assets, if he has neglected a proper opportunity to make a sale (*h*).

Office for years.

A grant for years of an office is assets in the hands of the executor or administrator of the grantee (*i*).

Estates *pur autre vie.*

Before the Wills Act.

The Statute of Frauds (29 Car. II. c. 3, s. 12), after enacting that estates *pur autre vie* shall be devisable by a will in writing, signed by the devisor or by some other person in his presence and by his express directions, and attested and subscribed in the presence of the devisor by three or more witnesses (*k*), proceeds to enact, that if no such devise thereof is made, the same shall be chargeable in the hands of the heir, if it shall come to him by special occupancy, as assets by descent: and in case there shall be no special occupant, it shall go to the executors or administrators of the grantee, and shall be assets in their hands.† It must be remarked that this statute does not declare to whom the residue or surplus, which shall remain in the hands of the executors or administrators, shall belong, in case the estate goes to them under the statute: And in the *case of Oldham *v.* Pickering (*l*), it was determined, that such residue was *not* distributable amongst the next of kin; for, notwithstanding the alteration by the statute, the estate remained freehold. This gave occasion to the passing of the stat. 14 Geo. II. c. 20, s. 9, which, after reciting the statute of Car. II., and that doubts had arisen, where no devise was made of such estates, to whom the surplus of such estates, after the debts of such deceased owners thereof are fully satisfied, shall belong, enacts, "that such estates *pur autre vie*, in case there be no special occupant thereof, of which no devise shall have been made

† See American note, Vol. 1, p. 818, *ubi supra.*

(*g*) Wentw. Off. Ex. 173, 14th edit. Godolph. Pt. 2, c. 24, s. 8. Sale *v.* Bishop of Lichfield, Owen, 99. Smallwood *v.* Bishop of Lichfield, 1 Leon. 205.

(*h*) Wentw. Off. Ex. 173, 14th edit.

(*i*) Sir George Reynel's case, 9 Co. 97, a. Schellinger *v.* Blackerby, 1 Ves. Sen. 347.

(*k*) Lands held under leases for lives will pass by a devise under the words "lands and hereditaments": Fitzroy *v.* Howard, 3 Russ. Chanc. Cas. 223: See also Weigall *v.* Brome, 6 Sim. 99; and the Wills Act, 1 Vict. c. 26, s. 26.

(*l*) 2 Salk. 464. S. C. Carth. 376.

[*1539]

according to the said Act for Prevention of Frauds and Perjuries, or so much thereof as shall not have been so devised, shall go, be applied and distributed, in the same manner as the personal estate of the testator or intestate."

Neither of these statutes, however, provides expressly for the case of a tenant *pur autre vie* dying intestate as to that estate, but having made a valid will of his personalty: or in other words, the statutes omit to state whether the surplus shall in such case go according to the personal estate disposed of by the will, or as undisposed of personal estate (*m*). Nor is any provision made by these statutes for the surplus which may be in the hands of an executor or administrator as special occupant. Both these points were fully considered by Lord Eldon in the case of Ripley *v.* Waterworth (*n*). There lands had been limited to a man, his executors, administrators, and assigns, *pur autre vie:* He died, having published his will (not attested according to the Statute of Frauds), and appointed an executor, and made a residuary bequest of his personal estate: There were four distinct claimants, the heir-at-law, the residuary legatee, and the next of kin; and a claim was made by the executor for his own benefit: For the heir-at-law it was urged, that it was real estate, *viz.*, a descendible freehold; that it would not *pass by an unattested will, and an executor could not at common law take as special occupant; and therefore, the heir-at-law was entitled: For the residuary legatees and next of kin it was urged, that an executor might at common law take an estate *pur autre vie*, as special occupant; and that even prior to the Statute of Frauds, it was assets in his hands; and that it would be strange if (the statute providing, that where there is no special occupant, it shall go to the executor) it should not go to the executor where it is expressly given to him; and that the executor would, as special occupant, take it as personal estate, chargeable with debts, and subject to application as personal estate after debts paid: The Lord Chancellor was of opinion, that it could in no event go to the heir; that it did not belong to the executor; and that, as between the next of kin and residuary legatee, the executor was in equity a trustee for those to whom the testator had given the personal estate, by a will sufficient to pass personal estate, and therefore he must be considered as holding it for the residuary legatee (*o*).

(*m*) See Watkins on Conveyancing, 71, note by Morley and Coote.

(*n*) 7 Ves. 425.

(*o*) Watk. Convey., edition by Morley and Coote, p. 71, note. See also James *v.* Dean, 11 Ves. 392: and the observa-

[*1540]

With respect to estates *pur autre vie* of any deceased person, who shall not have died before the 1st day of January, 1838, the statute 1 Vict. c. 26, after repealing the above-mentioned statutes of Car. II. and Geo. II., and enacting, by section 3, that the power of every person to devise his estate shall extend to estates *pur autre vie*, whether there shall or shall not be any special occupant thereof, and whether the same shall be a corporeal or incorporeal hereditament, proceeds to enact, by section 6, that "if no disposition by Will shall be made of any estate *pur autre vie* of a freehold nature, the same shall be chargeable in the hands of the heir, if it shall come to him by reason of special occupancy, as assets by descent, as in the case of freehold land in fee-simple; and in case there shall *be no special occupant of any estate *pur autre vie*, whether freehold or customary freehold, tenant-right, customary or copyhold, or of any other tenure, and whether a corporeal or incorporeal hereditament, it shall go to the executor or administrator of the party that had the estate thereof by virtue of the grant, and if the same shall come to the executor or administrator either by reason of a special occupancy or by virtue of this Act, it shall be assets in his hands, and shall go and be applied and distributed in the same manner as the personal estate of the testator or intestate" (*p*).

Since the Wills Act.

1 Vict. c. 26, s. 6.

The effect of these statutes is not to convert estates *pur autre vie* in land into pure personalty or movables. It is merely that such estates are in some cases to be applied in the same manner as personal estate. The result is that exemption from the duties imposed by the Legacy Duty Acts cannot be claimed in respect of such estates when they form part of the estate of a person having a foreign domicil on the ground that "*mobilia sequuntur personam:*" neither can exemption be claimed on the ground that such estates are real property and therefore not within the Legacy Duty Acts, for by the Wills Act (s. 6) it is provided that such estates shall be assets in the hands of the executor or administrator and shall go and be applied and distributed in the same manner as the personal estate of the testator or intestate; and by 36 Geo. III. c. 52, s. 20, estates *pur autre vie* applicable by law in the same manner as per-

tions of Lord Lyndhurst, in Fitzroy *v.* Howard, 3 Russ. Chanc. Cas. 230.

(*p*) See, as to the construction of this section, Reynolds *v.* Wright, 2 De G. F. & J. 590. 25 Beav. 100. *Ante*, p. *602, note (*a*).

sonal estate shall be charged with the duties thereby imposed as personal estate (*q*).

Property to which an executor is entitled as *persona designata.*

In the case above cited of Ripley *v.* Waterworth, Lord Eldon observed, with respect to the claim of the executor for his own benefit, that he doubted whether an executor or administrator ever takes anything as such which he will not *be bound to apply as personal estate of the testator or intestate (*r*): And in Milner *v.* Harewood (*s*), his lordship, recurring to his decision in Ripley *v.* Waterworth, said, "I have determined, and I see no reason to dissent from it, that, where the executor is the special occupant, taking as executor, he must hold that as all other property taken by an executor, and therefore distributable in this Court." From this principle it seems to be a necessary deduction, that whenever personal estate is limited to executors or administrators, as purchasers, they will take for the benefit of the persons entitled to the personal estate. There has already been occasion, in a previous part of this treatise (*t*), to state, at some length, the authorities which are connected with this question.

Property in testator as trustee.

The absolute property of the goods must have been vested in the testator, in order to make them assets in the hands of the executor (*u*).† Therefore, if the testator takes a bond for another in trust, and dies, this is not assets in the hands of his executor: So if the obligee assigns over a bond, and covenants not to revoke, and dies, that bond is not assets in the hands of the executor of the obligee (*v*).

So, too, all property vested in the testator as sole trustee which may have been devised or bequeathed by his will to his executors will not of course be assets in their hands. The amount of such trust property which will come to the hands of the executor in cases of the death of a sole trustee after the 31st December, 1882, has been

† See American note at end of this chapter.

(*q*) See Chatfield *v.* Berchtoldt, L. R. 7 Ch. 192.

(*r*) 7 Ves. 438.

(*s*) 18 Ves. 259, 273.

(*t*) *Ante*, pp. *991, *1002 *et seq.*

(*u*) Bac. Abr. Exors. (H) 1. See Parker *v.* Baylis, 2 B. & P. 78.

(*v*) Deering *v.* Torrington, 1 Salk. 79. But in Byrn *v.* Godfrey, 4 Ves. 6, it was held that a promissory note given to the testator was assets, notwithstanding his declaration to his executor that he never meant to call for payment of it.

[*1542]

much increased by sect. 30 of the Conveyancing Act, 1881, which provides that:—"Where an estate or interest of inheritance, or *limited to the heir as special occupant, in any tenements or hereditaments, corporeal or incorporeal, is vested on any trust or by way of mortgage, in any person solely, the same shall on his death notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives or representative from time to time, in like manner as if the same were a chattel real vesting in them or him; and, accordingly, all the like powers, for one only of several joint personal representatives, as well as for a single personal representative, and for all the personal representatives together, to dispose of and otherwise deal with the same, shall belong to the deceased's personal representatives or representative from time to time, with all the like incidents, but subject to all the like rights, equities, and obligations, as if the same were a chattel real vesting in them or him; and, for the purposes of this section, the personal representatives for the time being of the deceased shall be deemed in law his heirs and assigns within the meaning of all trusts and powers" (*x*).

Terms attendant on the inheritance of testator. [Prior to Dec. 31, 1845.]

It is necessary in this place to advert to the nature of terms attendant on the inheritance (*y*). When a term for years before December 31, 1845, was created for a particular purpose, as for raising money for payment of debts, or portions for younger children, and the purpose for which the term was created was satisfied, the termor was considered in equity as a trustee for the owner of the inheritance; and though at law the term was deemed a term in gross in such *trustee, yet in equity it followed the fee, and was looked upon as completely consolidated with it (*z*): Hence it was not regarded as personal assets in the hands of the executor of the person entitled to the fee, but as real assets which went to his heir (*a*). Yet this must not be under-

(*x*) By sect. 45 of the Copyhold Act, 1887 (50 & 51 Vict. c. 73), it is provided that: "The thirtieth section of the Conveyancing and Law of Property Act, 1881, shall not apply to land of copyhold or customary tenure vested in the tenant on the Court Rolls of any manor upon any trust or by way of mortgage."

(*y*) But by stat. 8 & 9 Vict. c. 112, after Dec. 31, 1845, all terms attendant on the inheritance shall determine, unless for the purpose of protection in certain cases, against incumbrances. See Cottrell *v.* Hughes, 15 C. B. 532. Plant *v.* Taylor, 7 H. & N. 211. Owen *v.* Owen, 3 H. & C. 88.

(*z*) See Watk. Convey. 48, note by Morley and Coote.

(*a*) Tiffin *v.* Tiffin, 1 Vern. 1. Thruxton *v.* Atty.-Gen., 1 Vern. 341.

stood of every term which attended the inheritance: for where a termor purchased the freehold and inheritance, and took a conveyance thereof in the name of a trustee, although the term in himself was attendant on his equitable fee-simple, yet, at his death, it was assets in the hands of his personal representatives (*b*).

Fund for specific purposes not general assets.

It must be observed, that executors or administrators cannot be in a better condition, with respect to the estate of the deceased, than he himself would have been in; and therefore they cannot employ as general assets, property which he would have been bound to apply to a particular purpose (*c*):† Thus, in Hassall *v.* Smithers (*d*), a remittance in bills and notes for a specific purpose, *viz.*, to answer acceptances, was received by an administrator, in consequence of the death of the party to whom the remittance was made: and it was held, that the special purpose operated as a lien, and that the sum remitted could not be applied by the administrator as general assets.

Other instances may occur, where personal property may be in the hands of the executor, and yet not applicable to any but a special purpose: Thus, in Parry *v.* Ashley (*e*), the testator charged his real estate, which consisted of one house only, with an annuity to his widow, and subject to that *annuity he devised it to Sarah Ashley in fee, and appointed her his executrix: The testator had insured the house; and on the expiration of the policy a few months after his death, it was renewed by Sarah Ashley: The house was afterward burnt down: And Sir L. Shadwell, V.-C., held, that as she, being executrix, renewed the policy, it must be taken that she did so in the character of executrix (*f*): But his Honor was of opinion, that the proceeds of the policy could not be considered as part of the testator's personal estate, but that they

(*b*) Dowse *v.* Percival, 1 Vern. 134. Thruxton *v.* Atty.-Gen., 1 Vern. 341. Gunter *v.* Gunter, 23 Beav. 571. See also Belaney *v.* Belaney, L. R. 2 Eq. 210. L. R. 2 Ch. 138.

(*c*) See *Acc.*, *per* Lord Ellenborough in Taylor *v.* Plumer, 3 M. & S. 578: and *per* Littledale, J., in Ashby *v.* Ashby, 7 B. & C. 453.

† See American note at end of this chapter.

(*d*) 12 Ves. 119.

(*e*) 3 Sim. 97.

(*f*) It may here be mentioned, that it has been held that an executor in trust has a sufficient interest to enable him to make an insurance in his own name, on the life of a person who has granted an annuity to the testator: Tidswell *v.* Ankerstein, Peake, N. P. C. 151.

[*1545]

were affected with a trust for the benefit of the parties interested in the real estate (*g*).

Property assigned in fraud of creditors.

Where a deed is set aside as fraudulent against any of the creditors of the deceased, the property becomes assets, and subsequent creditors are let in (*h*). An assignment within the statute 13 Eliz. c. 5, is utterly void against creditors, and the property assigned is assets in the hands of the executor (*i*). The question as to what is, and what is not, a fraudulent conveyance against creditors, does not fall within the scope of this work.

Equitable assets in the hands of an executor.

Hitherto the subject has been confined to the consideration of assets, such as may be reached at law, and such as a creditor, suing the executor in an action at law for a debt, due from the testator, might bring forward in evidence on an issue joined on the executor's plea of *plene administravit:* But there are, besides, various interests frequently forming part of the estate of an executor or administrator, which are not recognized as assets at law; and which, therefore, if *administered at all, must be administered in equity: This latter portion of the estate in the hands of an executor or administrator is called *equitable assets*, in contradistinction to the former, which is called legal assets. In other words, legal assets are such as are liable to debts in the temporal courts, and were formerly liable to legacies in the spiritual, by the course of law: Equitable assets are such as are liable only by the help of a Court of Equity.†

Distinction between legal and equitable assets.

Until quite recently a most important distinction existed with respect to the administration of these two kinds of assets: If they were legal, they must have been administered by the executor or administrator of the deceased in a due course of administration, having regard to those rules of priority among creditors which have already been investigated in this treatise (*k*); But if the assets in the hands of an ex-executor are equitable, then, although the precedence in payment of

(*g*) See also Cruikshank *v.* Roberts, Madd. & Geld. 104. Thacker *v.* Wilson, 3 A. & E. 142. Smedley *v.* Philpot, 3 M. & W. 573, for other instances of assets in the hands of executors not being regarded as part of the general personal estate.

[*1546]

(*h*) Richardson *v.* Smallwood, 1 Jac. 552.

(*i*) Shears *v.* Rogers, 3 B. & Ad. 362. Shee *v.* French, 3 Drew. 716.

† See American note at end of this chapter.

(*k*) *Ante*, p. *850 *et seq.*

debts to legacies must be respected, yet, as among creditors, the assets must be applied in satisfaction of all the claimants, *pari passu*, without any regard to the priority in rank of one debt to another: The principle of this distinction is, that in natural justice and conscience, and in the contemplation of a Court of Equity, all debts are equal, and the debtor is equally bound to satisfy them all, whether by specialty or by simple contract: Therefore, since a claimant upon equitable assets is under the necessity of going to a Court of Equity in order to reach them, that court will act only according to the rule of doing justice to all creditors, without any distinction as to priority (*l*).

The importance, however, of the distinction between legal and equitable assets has been greatly diminished by two statutes.

Distinction less important since 1869.

*By stat. 32 & 33 Vict. c. 46, it is enacted (*m*), that—

32 & 33 Vict. c. 46.

"In the administration of the estate of every person who shall die on or after Jan. 1st, 1870, no debt or liability of such person shall be entitled to any priority or preference by reason merely that the same is secured by or arises under a bond deed or other instrument under seal or is otherwise made or constituted a specialty debt, but all creditors of such person as well specialty as simple contract shall be treated as standing in equal degree and be paid accordingly out of the assets of such deceased person whether such assets are legal or personal any statute or other law to the contrary notwithstanding: Provided also that this Act shall not prejudice or affect any lien or charge or other security which any creditor may hold or be entitled to for the payment of his debt."

And by stat. 38 & 39 Vict. c. 77, sect. 10 (Judicature Act, 1875), it is enacted that—

38 & 39 Vict. c. 77, s. 10.

In the administration by the Court of the assets of any person who may die after the commencement of this Act (Nov. 1, 1875), and whose estate may prove to be insufficient for the payment in full of his debts and liabilities . . . the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors and as to the debts and liabilities

(*l*) Plunket *v.* Penson, 2 Atk. 294. It seems that the separate estate of a married woman, under the Married Women's Property Act, 1870, becomes upon her death equitable assets, and divisible amongst her creditors *pari passu:* Re Poole's Estate, 6 C. D. 739. The contrary opinion was, however, expressed in the case of Shattock *v.* Shattock, L. R. 2 Eq. 182, 194.

(*m*) *Ante*, p. *869.

[*1547]

provable, and as to the valuation of annuities and future and contingent liabilities respectively as may be in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt.

It should be noticed that with regard to persons who died before January 1st, 1870, the old rules as to priority in administration remain applicable, and as to persons dying after that date and before November 1st, 1875, the old rules would still apply except that specialty and simple contract creditors stand on the same footing.

Test whether assets are legal or equitable.

It must be observed that the true test, as to whether the assets are legal or equitable, is not whether the executor or *administrator, but whether the *claimant* can reach them without resorting to a Court of Equity.

Whether the equity of redemption of a term for years is equitable or legal assets in the hands of an executor or administrator has been much discussed, and the reader is referred to the cases in the note below (*n*).

Equities of redemption not necessarily equitable assets.

It appears to be the better opinion at this day, that equities of redemption are not necessarily equitable assets (*o*): And in the view of an eminent writer (*p*), the more accurate statement of the doctrine is, that legal assets are such as come into the hands and power of an executor or administrator, or such as he is intrusted with by law, *virtute officii*, to dispose of in the course of administration; or in other words, whatever an executor or administrator takes, *qua* executor or administrator, or in respect to his office, is to be considered as legal assets. So, in the case of Cook *v.* Gregson (*q*), Kindersley, V.-C. (applying the test whether the executor or administrator would take simply *virtute officii*), held that an equity of redemption on a mortgage of a sum of money charged on a real estate, was legal assets: And his Honor said, that he thought the cases above cited as to mortgages for terms for years could not be supported. In the later case of Shee *v.* French (*r*), the same learned judge laid down that the question whether assets are legal or equitable depends on this, whether, if the case were

(*n*) The Creditors of Sir Charles Cox, 3 P. Wms. 342. Hartwell *v.* Chitters, Amb. 308. Sharpe *v.* Scarborough, 4 Ves. 541. Clay *v.* Willis, 1 B. & C. 364. Wentw. Off. Ex. 14th edit. p. 186.

(*o*) See 2 Jarman on Wills, 4th edit. 623. Story on Equity, Ch. ix. s. 551, note (1).

(*p*) Story on Equity, Ch. ix. s. 551.

(*q*) 20 Jur. 510. 3 Drewr. 547.

(*r*) 3 Drewr. 716.

[*1548]

before a Court of Law, on an issue of *plene administravit*, that court would treat the property as assets, and the principle on which a Court of Law proceeds is to inquire whether the property came to the hands of the executor *virtute officii:* If it did, the Court of Law regards it as assets, applicable to the payment of the testator's debts; and then a Court of Equity treats it as legal assets (*s*).

Proceeds of sale of real estate equitable assets.

*With respect to that portion of the property in the hands of an executor or administrator, which consists of the proceeds of the sale of real estate, it was long ago settled that such proceeds were *equitable* and not legal assets (*t*).

And it is quite clear that the testator cannot alter the legal character of the property, by directing that it shall be considered as part of his personal estate (*u*). But it is a mistake to treat the price of an estate contracted by the testator to be sold and afterward received by the executor as proceeds of the real estate in the hands of an executor in the sense that makes the proceeds of real estate equitable assets (*x*).

Marshaling of assets, partly legal and partly equitable.

Rights of legal preference are, however, controlled by a rule which formerly, before the stat. 32 & 33 Vict. c. 46 put specialty and simple contract creditors on an equality, was of great importance, and which is even now occasionally applicable, as for instance where a creditor executor has partly paid himself by retainer. The rule is that where the assets are partly legal, and partly equitable, though equity cannot take away the legal preference on legal assets, yet if one creditor has been partly paid out of such legal assets, when satisfaction comes to be made out of equitable assets, the court will postpone him until there is an equality in satisfaction to all the other creditors out of the equitable assets, proportionable to so much as the legal creditor has been satisfied out of the legal assets (*y*).

(*s*) See *Accord.* Atty.-Gen. *v.* Brunning. 8 H. L. C. 243, 256, 264, 265. Christy *v.* Courtenay, 26 Beav. 140. Mutlow *v.* Mutlow, 4 De G. & J. 539.

(*t*) Clay *v.* Willis, 1 B. & C. 364. Barker *v.* May, 9 B. & C. 489. Bain *v.* Sadler, L. R. 12 Eq. 570. The case of Lovegrove *v.* Cooper, 2 Sm. & G. 271, is not law.

(*u*) See *per* Lord Tenterden, in Barker *v.* May, 9 B. & C. 489.

(*x*) Atty.-Gen. *v.* Brunning, 8 H. L. C. 243, reversing the decision of the Exchequer, 4 H. & N. 94. Where a testator devised a freehold house to A., whom he appointed one of his executors charged with a sum of money payable within twelve months, this was held *equitable* assets in the hands of the executors: Lowe *v.* Peskett, 16 C. B. 500. *Ante*, p. *1180, note (*e*).

(*y*) Morrice *v.* Bank of England, Cas.

[*1549]

Beneficial interest under a power.

*Where a man has a general power of appointment over a fund, and he actually exercises his power, whether by deed or will, the property appointed shall form part of his assets, so as to be subject to the demands of his creditors at his death, in preference to the claims of his legatees or appointees (z). *But in order to raise this equity, the power must be

temp. Talb. 220, by Lord Talbot. Chapman v. Esgar, 1 Sm. & G. 575. Bain v. Sadler, L. R. 12 Eq. 570.

(z) Thompson v. Towne, 2 Vern. 319. Hinton v. Toye, 1 Atk. 465. Bainton v. Ward, 2 Atk. 172. Townshend v. Windham, 2 Ves. Sen. 9. Pack v. Bathurst, 3 Atk. 269. Troughton v. Troughton, 3 Atk. 656. George v. Milbanke, 9 Ves. 190. Jenny v. Andrews, 6 Mad. 264. Fleming v. Buchanan, 3 De G. M. & G. 976. Williams v. Lomas, 16 Beav. 1. Platt v. Routh, 6 M. & W. 789. Moreover, it has been held that resort cannot be had, in any case, to the appointed property, till all the testator's own property has been exhausted: Fleming v. Buchanan, 3 De G. M. & G. 976. How far this doctrine applies to the case of an appointment by will of a married woman of property settled to her separate use for life, unless she has been guilty of fraud in her contracts, and how far the application of the doctrine has been affected by the Married Women's Property Act, 1882, has been left in doubt by the decided cases. The cases of Vaughan v. Vanderstegen, 2 Drew. 165. Blatchford v. Woolley, 2 Dr. & Sm. 204. Shattock v. Shattock, L. R. 2 Eq. 182, go to show that where a married woman has property settled upon her for her separate use, she is capable of charging and making it liable to her general debts as if she were a *feme sole;* but if she has only a power she is not capable of charging or making it liable to her general debts, at all events, if the power is one which can be exercised only by will. These cases seem to have been disapproved in the London Chartered Bank of Australia v. Lempriere, L. R. 4 P. C. 572; in Mayd v. Field, 3 C. D. 587; and in Re Harvey's Estate, 13 C. D. 216, which was followed in Hodges v. Hodges, 20 C. D. 749. Kay, J., however, in Re Roper, 39 C. D. 482, treats these cases as good law, and held that an appointment by a married woman by will, in the exercise of a general power of appointment by deed or will, or by will only, does not make the appointed property liable to engagements entered into by her on the credit of her separate estate prior to the commencement of the Married Women's Property Act, 1882, and that the exercise of the power did not make the appointed property liable as assets of the appointor. The learned judge, after stating that there is no doubt that in the case of a man who has a general power of appointment, and exercises it by will in favor of volunteers, the property so appointed will be considered assets for the payment of his debts, goes on to put to himself the question, Does this law apply to the case of a married woman? And says, speaking of the law before the Married Women's Property Act, 1882, "It would be strange if the law was that only the separate property which a married woman had at the time (of her engagement) should be liable to the exclusion of separate property acquired afterward, but that nevertheless the exercise by Will of a general power of appointment would make the appointed fund, which never was her separate

[*1550] [*1551]

actually executed; for equity never aids the non-execution of a *power (*a*). And although creditors in these cases prevail over volunteers, yet if a party taking under voluntary appointment sell to a person *bona fide*, and for a valuable consideration, such person, in analogy to the decisions on the statute of voluntary conveyances, will be preferred to the creditors, as having a preferable equity to them (*b*).

property, liable. Even if it could be said to become her separate property by the appointment, this would only be so at her death long after the engagement entered into, and therefore, according to Pike *v.* Fitzgibbon, 17 C. D. 454, the appointed property could not be made liable. Suppose she had a general power to appoint by deed or Will, and exercised it by a deed to take effect upon her death, would the appointment be void against her creditors or be an appointment for their benefit under 13 Eliz. c. 5? Or suppose she survived her husband, and exercised the power by Will after his death, would the property then become liable for her engagements during coverture? I think not. A married woman could not contract debts like a person completely *sui juris*. Her engagements only bound her to the extent of her separate property at the time which might be reached by judgment and execution. It follows that when she afterward exercised the general power, whether by deed or Will, she had no debts which could be made available against it." And the learned judge concludes: "My opinion is that in cases not within the Married Women's Property Act, 1882, whether the power of appointment be by deed or Will, or by Will only, an appointment by the Will of a married woman does not make the property appointed liable to engagements entered into with her on the credit of her separate estate. What the law may be as to cases falling within that Act, I express no opinion save this: that to make property appointed by the Will of a married woman liable to her engagements under that Act, it seems necessary to hold that the appointment by her Will makes the property appointed her separate property, because it is only 'all separate property which she may thereafter acquire' which is by that Act rendered liable." In *Ex parte* Gilchrist, 17 Q. B. D. 521, it was held that the expression "separate property" in the Married Women's Property Act, 1882, does not include a general power of appointment by deed or will of which she is the donee, but which she has not exercised. But this decision leaves open the question whether the exercise of such power makes the property appointed assets of the appointor, and liable to her debts. It is to be observed in this judgment that Kay, J., was dealing with a case not within the Married Women's Property Act, 1882, and does not, therefore, take into consideration the effect of sect. 4 of that act, which provides that: "The execution of a general power by Will by a married woman shall have the effect of making the property appointed liable for her debts and other liabilities in the same manner as her separate estate is made liable under this Act."

As to an unexercised power to bequeath a death allowance out of funds of a friendly society not being assets, see Ashby *v.* Costin, 21 Q. B. D. 401.

(*a*) Holmes *v.* Coghill, 7 Ves. 499. 12 Ves. 206.

(*b*) George *v.* Milbanke, 9 Ves. 190. Hart *v.* Middlehurst, 3 Atk. 377. 2 Sugd. Pow. 29, 6th edit.

† *Assets—Actual possession.* The liability of the personal representative of the deceased to account for the personal assets of the estate is not confined to the assets that have come into h s actual possession, but extends to all choses in action of the deceased. See Vol. II. pp. 20 *et seq., ubi supra.* He is liable for such choses in action although they may be in the hands of a third person, if they have come to his knowledge. Potter *v.* Titcomb, 10 Me. 53. He has a right of action for property in the hands of third persons which has been conveyed to them by the deceased in fraud of creditors. Babcock *v.* Booth, 2 Hill 181; McLane *v.* Johnson, 43 Vt. 48; McKnight *v.* Morgan, 2 Barb. 171; Holland *v.* Cruft, 20 Pick. 321. But his right of recovery is limited to the amount required for debts and expenses. McLean *v.* Weeks, 61 Me. 277. He may even set up such right to a note transferred by the deceased in an action brought against him on the note. Cross *v.* Brown, 51 N. H. 486. In like manner property that has been ineffectually disposed of by the deceased is assets of his estate, *e. g.*, where the deceased executed a bill of sale, but never delivered it, Palmer *v.* Palmer, 55 Mich. 293; or handed a sum of money to a third person for certain purposes with no sufficient direction as to disposing of the balance. Bigelow *v.* Paton, 4 Mich. 170. So, an administrator may ratify a sale of personalty made by the widow before administration granted, and receive payment of the purchase money for the estate. Rockwell, *v.* Young, 60 Md. 563. But where the deceased made an absolute gift to A., who sold it after his death and paid over part of the proceeds to testator's only child, in the absence of fraud upon creditors, the money cannot be claimed as assets by the executor. Day *v.* Day, 100 Ind. 460. So, where the property was subject to an option in the landlord of the intestate to take it for his rent at its market value (it being held that the option expired at the death of the tenant). Wait, appellant, 7 Pick. 100. On the other hand, the assets of the deceased for which he is liable will not include property of others that can be identified as such, whether it was found in the possession of the deceased at the time of his death, Schouler on Exrs. § 205; Woerner on Admn. § 305; Cooper *v.* White, 19 Ga. 554; Knight *v.* Knight, 75 Ga. 386; Moses *v.* Murgitroyd, 1 Johns. Ch. 119; Mulford *v.* Mulford, 13 Stew. (N. J.) 163; or came afterward into the hands of the executor, *e. g.*, money collected by him for goods sold by his testator as factor for a third person. Estate of Merrick, 8 Watts & S. 402. So, the wife's half of a savings bank deposit in the joint names of herself and her deceased husband. Matter of Brooks, 5 Dem. 336. So, a note and mortgage made to husband and wife go to the wife in case she survives, and not the husband's administrator as assets. Draper *v.* Jackson, 16 Mass. 480; Burleigh *v.* Coffin, 22 N. H. 118; Hawkins *v.* Craig, 6 Mon. 254; Turner *v.* Davis, 1 B. Mon. 151. But money belonging to the widow must be accounted for as assets, if it is by her direction collected by the administrator and applied to the debts of the estate. Wilkinson *v.* Ward, 42 Ill. Ap. 541.

Assets of the deceased do not include partnership assets held by the surviving partner, Camp *v.* Frazer, 4 Dem. 212; especially such property as the books of a firm. Canfield *v.* Hard, 6 Conn. 180. As to partnership and other joint property, see Vol. I. pp. 793–95, *ubi supra.* On the other hand, where the deceased was a silent partner of his executor, under a partnership agreement providing for a certain rate of interest to

be allowed to the deceased on his share of the capital, the executor will be charged with the capital and interest of such share as assets. Matter of Foote, 17 N. Y. Supp. 44. In some states statutory provision is made for transferring the partnership assets to the executor or administrator of the deceased partner on his giving the statutory bond after refusal of the surviving partner to give such bond. Teney *v.* Laing, 47 Kan. 297 (1889 G. S. §§ 2819–20). So, in *Maine* (1883 R. S. 69, § 4). And a partnership creditor may bring suit against the administrator giving such bond. Bass *v.* Emery, 74 Me. 338.

Good will—Pensions—Privilege—License, etc. The good will of the decedent's business is to be accounted for as part of the assets of his estate, Matter of Randall, 2 Connoly 29; Thompson *v.* Winnebago County, 48 Ia. 155; and to be considered in valuing his interest in a continuing partnership business. Platt *v.* Platt, 42 Conn. 330. And where the testator devises his place of business to his wife for life, the good will will go with the life estate. Estate of Lange, 12 Phila. 52.

The estate of the deceased formerly included United States pension moneys accumulated by him, Perkins *v.* Hinckley, 71 Ia. 499; Baugh *v.* Barrett, 69 Ia. 495; received and deposited by the deceased, Beecher *v.* Barber, 6 Dem. 129; and unpaid pension warrants issued to him before his death, Heard *v.* Northington, 49 Tex. 439; but not arrears of a revolutionary pension payable by statute for the benefit of the children of the pensioner. Perkins *v.* Perkins, 46 N. H. 110. And, in general, the payment of pensions is regulated by the statute.

In like manner, valuable prerogatives and privileges of the deceased, such as letters patent, or copyright and trading licenses (not inseparably connected with the land), belong to the decedent's personal assets.

So, an unexpired fire insurance policy taken out by the deceased on real estate specifically devised is part of the personal estate of the deceased. Estate of Hurley, 13 Phila. 276.

Property subsequently accrued or acquired. The assets of an estate may include property which never came to the hands of the deceased, such as the subsequent increase of his property, Wingate *v.* Pool, 25 Ill. 118; Smiley *v.* Smiley, 80 Mo. 44; Merchant's Case, 14 Stew. (N. J.) 349, affg. 12 Id. 506; Soldini *v.* Hyams, 15 La. An. 551; or income accumulated, and not expended before the death of a life tenant, Estate of Rhodes, 147 Pa. St. 227; or a salary voted to him after his death, Loring *v.* Cunningham, 9 Cush. 87; or money earned by a vessel belonging to his estate, Littlefield *v.* Eaton, 74 Me. 516; or by his capital retained in a partnership business, Ames *v.* Downing, 1 Bradf. 321; or money recovered on an appeal bond given to the executors, Sasscer *v.* Walker, 5 Gill & J. 102; or collected under a public treaty or government claim after the death of the deceased, such as "Alabama" claims, Grant *v.* Bodwell, 78 Me. 460; or claims under the Mexican treaty, Thurston *v.* Lowder, 40 Me. 197; Thurston *v.* Doane, 47 Me. 79; or French spoliation claims, Rogers *v.* Hosack, 18 Wend. 319; Foster *v.* Fifield, 20 Pick. 67; Leffingwell's Appeal, 62 Conn. 347; Estate of Clement, 150 Pa. St. 85; although the contrary has been held as to "Alabama" claims, Matter of Cooley, 6 Dem. 77; and French spoliation claims. Gardner *v.* Clarke, 20 D. C. 261.

Insurance. Where the decedent held a policy of life insurance on the life of another, it will be assets of his estate, although the person insured still survives. McCauley's Appeal, 93 Pa. St. 102; Conigland *v.* Smith, 79 N. C. 303;

Simmons *v.* Biggs, 99 N. C. 236. And even the surviving person insured may take a share in such policy as one of the next of kin. Mutual Aid Society *v.* Miller, 107 Pa. St. 162; Deginther's Appeal, 83 Pa. St. 162; Simmons *v.* Biggs, 99 N. C. 236.

So, a policy of insurance on the life of the deceased is assets of his estate, if made payable to him, Union Mutual Life Insurance Co. *v.* Stevens, 19 Fed. Rep. 671; or his "legal representatives," People *v.* Phelps, 78 Ill. 147; Kelley *v.* Mann, 56 Ia. 625; or subject to his will, Winterhalter *v.* Workman's Guarantee Fund Association, 75 Cal. 245; or in trust for his heirs. Harding *v.* Littlehale, 150 Mass. 100. Such a policy payable to him or his legal representatives may be disposed of by his will. Williams *v.* Carson, 9 Baxt. 516. So, in general, a benefit policy. Mutual Association *v.* Montgomery, 70 Mich. 587. And one who collects the money under a void assignment is liable in an action by the executor or administrator, and not otherwise. Lee *v.* Chase, 58 Me. 432. But if the next of kin collect it without authority, and the money is not needed for the payment of debts, they will be allowed to retain their distributive shares in a suit brought by the administrator for the money. Elliot *v.* Whedbee, 94 N. C. 115. So, if the decedent take out the policy for the benefit of certain creditors, the balance after payment of such debts will belong to his estate. Gwynne *v.* Estes, 14 Lea 662. So, of a speculative or wager policy taken out by a person having no insurable interest (after re-imbursing him for premiums paid). Ruth *v.* Ketterman, 112 Pa. St. 251.

But an insurance policy is no part of his estate, if made payable to his children, Senior *v.* Ackerman, 2 Redf. 302; or to a trustee for his children, Cables *v.* Prescott, 67 Me. 582; or to any third person, Estate of Morrell, 13 Phila. 305; or, in default of other designation by will, to his wife and children, Swift *v.* San Francisco Stock Board, 67 Cal. 567; or has been legally assigned by the deceased in his lifetime, McFarland *v.* Creath, 35 Mo. Ap. 112; or assigned by the beneficiary to his executors in trust for the benefit of his wife and mother. Matter of Palmer, 3 Dem. 129. So, payments of less than a hundred dollars made by a benefit society for funeral expenses are not assets to be accounted for. Matter of Brooks, 5 Dem. 326. In Maine, the life insurance must be distributed under the intestate laws among his widow and children, and not used to pay debts or general legacies. Hathaway *v.* Sherman, 61 Me. 466. And where executors are not entitled to collect a life insurance policy, yet if they have done so, and the parties entitled have taken a decree against them for the money, it will bar a further proceeding on the policy against the company. Equitable Life Assurance Society *v.* May, 82 Ga. 646.

Debt of personal representative. The debt of an executor or administrator to the deceased is assets of the estate. Schouler on Exrs. § 208; Woerner on Admn. § 311; United States *v.* Eggleston, 4 Sawy. 199; Wood *v.* Tallman, Coxe (N. J.) 153; Weems *v.* Bryan, 21 Ala. 302; Cook *v.* Cook, 69 Ala. 294; Matter of Armstrong, 69 Cal. 239; McCarty *v.* Frazer, 62 Mo. 263. See also Vol. II. pp. 624, 627, n., *ubi supra*. Such debt is chargeable with interest like other debts. Rodenbach's Appeal, 102 Pa. St. 572. His sureties are liable, if the debt is omitted from his inventory, Williams *v.* Morehouse, 9 Conn. 470; or account, Winship *v.* Bass, 12 Mass. 199; Wright *v.* Lang, 66 Ala. 389; Seawell *v.* Buckley, 54 Ala. 592; Jones *v.* Chase, 55 N. H. 234; or distribution, Davenport *v.*

Richards, 16 Conn. 310; or in an application for sale of lands on account of insufficiency of personal assets. Chapin *v.* Waters, 110 Mass. 195. So, an executor is chargeable with the debt of a firm of which he is a member, Matter of Consalus, 95 N. Y. 340; Eaton *v.* Walsh, 42 Mo. 272; Succession of Bayly, 30 La. An. 75; or to a firm of which the deceased was a member, Whiting *v.* Leakin, 66 Md. 255; or with a debt as trustee of another estate, Gilmer *v.* Baker, 24 W. Va. 72; or with his liability as a principal debtor to indemnify the deceased as his surety. Bassett *v.* Granger, 136 Mass. 174. So, an administrator *de bonis non* must charge himself as surety for the administrator-in-chief, when his liability has been ascertained, Jacobs *v.* Morrow, 21 Neb. 233; but not with his contingent liability as such surety. Shields *v.* Odell, 27 O. St. 378. The burden of proof is upon the executor to show that the debt included in his inventory has been paid. Tichenor *v.* Tichenor, 18 Stew. (N. J.) 303, affg. 16 Id. 163. And he must account for the debt, although the note which was given for it has been lost by the testator. Clark *v.* Hornbeck, 2 C. E. Gr. 430. But his having inventoried the debt does not estop him from proving that he is not liable for it. Lynch *v.* Divan, 66 Wis. 490.

His sureties may show the original insolvency of the executor in reduction of the value of the debt as an asset and of their liability for it as such. McCarty *v.* Frazer, 62 Mo. 263; Baucus *v.* Barr, 107 N. Y. 624, affg. 45 Hun 582; although this will not reduce or discharge the executor's own liability, Norris *v.* Towle, 54 N. H. 290; Baucus *v.* Stover, 89 N. Y. 1; or excuse its omission from his inventory. Burkhalter *v.* Norton, 3 Dem. 610. But his inability to pay will relieve him from liability for contempt in not paying the amount found due. Matter of Ockershausen, 59 Hun 200. An executor's debt is still assets, although charged off in his account as uncollectible. Adair *v.* Brimmer, 74 N. Y. 539; Leland *v.* Felton, 1 Allen 531.

But when accounted for as an asset, it ceases to exist in its original form as a debt, and can no longer be transferred as such. Ipswich Manufacturing Co. *v.* Story, 5 Met. 310; or foreclosed as a mortgage debt, Martin *v.* Smith, 124 Mass. 111; or prosecuted as a debt by the subsequent administrator *de bonis non.* Jacobs *v.* Woodside, 6 S. C. 490. Where, on the other hand, a judgment debt recovered by the testator against his executor has been treated by the latter as still outstanding, it may be transferred by his successor, and enforced by the purchaser against lands on which it was a lien. Charles *v.* Jacobs, 9 S. C. 295.

Where the testator has directed the investment of the debt by his executor in a particular manner, it will be charged against him as cash assets as soon as it becomes due. Mitchell *v.* Thomson, 7 Mackey 130. But where the will gives the money to the executor (testator's son) as a loan for a certain time, and he dies before its maturity, it will be an individual debt payable by his estate when it matures, but not chargeable against the sureties on his bond as executor, although it has been inadvertently stated as an asset in the account filed by the son's executor. Brooks *v.* Hope, 139 Mass. 351.

Foreign assets. The personal representative of the deceased is entitled to his entire personal estate wherever situated, except in places where foreign or ancillary letters have been granted. Redfield on Wills 395; Schouler on Exrs. § 175; Woerner on Admn. § 308; Story Eq. Jur. § 514 a. He should include the foreign assets in his

inventory, Matter of Butler, 38 N. Y. 397; and endeavor to collect them, Schulz *v.* Pulver, 11 Wend. 361; unless committed by the will to a different executor. Sherman *v.* Page, 85 N. Y. 123. And if assets in a foreign jurisdiction come into his possession by a voluntary delivery, he may be required to account for them in the home jurisdiction. Von Bokkelen *v.* Cook, 5 Sawy, 587; Swearingen *v.* Pendleton, 4 Serg. & R. 389; Cureton *v.* Mills, 13 S. C. 409; Fox *v.* Tay, 89 Cal. 339.

But he will not be chargeable as executor with rents received for lands lying in another state, Morrill *v.* Morrill, 1 Allen 132; nor, generally, for personal assets in another state which have not come to his hands, Governor *v.* Williams, 3 Ired. 152; although he has tried to collect them, Bowman *v.* Carr, 5 Lea 571; or even collected and afterward lost them without fault of his own through the insolvency of the collecting attorney. Deberry *v.* Ivey, 2 Jones Eq. 370. As to the diligence required in the collection of assets, see p. *1726 n., *ubi infra.* And an ancillary administrator may apply for sale of lands in his jurisdiction to pay debts there, although there are sufficient personal assets for that purpose in the home jurisdiction. Lawrence's Appeal, 49 Conn. 411.

An administrator may proceed in his own jurisdiction against a foreign debtor who is temporarily within the jurisdiction. Saunders *v.* Weston, 74 Me. 85. And where he cannot collect the debt (because of the nonresidence of the debtor), he may sue in trover for a note or other evidence of the debt, although actually converted by the defendant in another state. Bullock *v.* Rogers, 16 Vt. 294. And a corporation holding bonds of a deceased nonresident deliverable on a transferable certificate of deposit may surrender them to a foreign executor on the return of the certificate. Shakespeare *v.* Fidelity Insurance &c. Co., 97 Pa. St. 173. But a suit pending against the foreign debtor in the jurisdiction of the deceased creditor's domicil is no bar to a suit subsequently brought in the foreign jurisdiction by an ancillary administrator appointed there. Merrill *v.* New England Insurance Co., 103 Mass. 245. And if he is sued as an individual debtor of the deceased in the domiciliary forum, he may plead that he has been appointed administrator, and as such inventoried his debt to the estate in his own jurisdiction. Stevens *v.* Gaylord, 11 Mass. 237. But a decree in the jurisdiction of the domicil, where the parties are properly before the court, will be binding upon the ancillary administration in another state, and govern the application of the assets there, Suarez *v.* Mayor, 2 Sandf. Ch. 173; even though the decree relates to the indebtedness of the administrator himself to the estate. Churchill *v.* Prescott, 3 Bradf. 233. A payment to the administrator of the domicil is good even against a local administrator subsequently appointed, Wilkins *v.* Ellett, 108 U. S. 256; where there are no local creditors or distributees to protect. S. C. 9 Wall. 740. And even after taking out ancillary letters, the ancillary administrator may collect moneys in his own jurisdiction under a power of attorney from the administrator of the domicil, and his sureties will not be liable for such moneys. Mackey *v.* Coxe, 18 How. 100. But where before the appointment of a local administrator a debtor of the estate made a voluntary payment to a foreign executor, it has been held to be no defense to a suit afterward brought by the local administrator. Young *v.* O'Neal, 3 Sneed 55.

An executor may transfer foreign assets under his control, such as a note made by a nonresident, Harper *v.* Butler, 2 Pet. 239; or secured by a

mortgage on land in another state, Gove *v.* Gove, 64 N. H. 503; or a mortgage on such lands, Smith *v.* Tiffany, 16 Hun 552; or stock in a foreign bank, Hutchins *v.* State Bank, 12 Met. 421; Peterson *v.* Chemical Bank, 32 N. Y. 21; or may vote on the stock of a foreign corporation. Matter of Cape May &c. Navigation Co., 22 Vroom 78.

Locality of debts as assets. Debts owing by citizens of a foreign state or country are assets to support administration there, Croswell on Exrs. § 64; Woerner on Admn. § 309; Arnold *v.* Arnold, 62 Ga. 627; Banta *v.* Moore, 2 McCart. 97; Merrill *v.* New England Insurance Co., 103 Mass. 245; Kohler *v.* Knapp, 1 Bradf. 242; Grant *v.* Reese, 94 N. C. 720; although secured by a mortgage on land lying in another state. Chamberlain *v.* Wilson, 45 Ia. 149. And see American notes, Vol. I. pp. 436, 484. So, the liability of a local insurance company is sufficient assets to give the Probate Court jurisdiction there, irrespective of the place where the policy itself may be. Matter of Miller, 5 Dem. 381. Even a negotiable note is assets where the maker resides, and may be collected and released by the local administrator, Slocum *v.* Sanford, 2 Conn. 533; but not without the consent of the administrator of the domicil, if he holds the note and has acquired jurisdiction over the person of the maker in another state. St. John *v.* Hodges, 9 Baxt. 334. But an administration at the seat of government cannot be based on a debt due from the United States government. Vaughan *v.* Northrup, 15 Pet. 1; Wyman *v.* Halstead, 109 U. S. 654, revg. United States *v.* Wyman, 2 Mackey 368.

Ancillary account. Where there is an ancillary administration in the foreign country, the local assets should be accounted for there, Apsden *v.* Nixon, 4 How. 467, 497; Porter *v.* Heydock, 6 Vt. 374; for the protection of local creditors, Lynes *v.* Coley, 1 Redf. 405; Myrick *v.* Hutchinson, 6 Kulp (Pa.) 293; and may be held against one claiming under the executor of the domicil. Willing *v.* Perot, 5 Rawle 264. But the administrator of the domicil, and not an ancillary administrator, is the one to account for assets in a third jurisdiction in which there is no administration. Baldwin's Appeal, 81 Pa. St. 441. And the fact that the intestate died in a foreign state with notes in his possession there which were made by a citizen of another foreign state and secured by lands in that state, will not support the title of the foreign administrator where he died, there being no administration in the residence of the maker of the notes. Moore *v.* Jordan, 36 Kan. 271. The ancillary estate may be administered as insolvent, although the estate at the domicil of the deceased is solvent. Gilchrist *v.* Cannon, 1 Coldw. 581. Where the domiciliary executor is also ancillary administrator in another state, he will not render his ancillary bondsmen liable for proceeds of land sold in the home jurisdiction and brought by him into the ancillary jurisdiction, State *v.* Osborn, 71 Mo. 86; or for other assets brought by him from the home jurisdiction and turned into cash in the ancillary jurisdiction. Keaton *v.* Campbell, 2 Humph. 224. And the sureties of the domicil will not be liable for his failure to inventory assets of the ancillary jurisdiction. Grant *v.* Reese, 94 N. C. 720. And it is no answer to the administrator's plea of *plene administravit* in one jurisdiction that he has in his hands proceeds of lands sold by him as ancillary administrator in another jurisdiction. Peck *v.* Mead, 2 Wend. 470. But where the domiciliary executor is also ancillary administrator in another state, and ac-

counts for assets and proves his own claim against the estate there, the settlement of the ancillary account (showing a balance in his favor) will not be conclusive on the home jurisdiction on his accounting there, Ela *v.* Edwards, 13 Allen 48; and if he has neglected to close his ancillary accounts, he may be required to account in the domiciliary jurisdiction for the foreign assets received by him. Matter of Ortiz, 86 Cal. 306.

Transmission of assets. After settlement of the ancillary account the balance in the hands of the administrator should, in general, be remitted to the domicil of the deceased for final settlement and distribution there, Trimble *v.* Dzieduzyiki, 57 How. Pr. 208; Porter *v.* Heydock, 6 Vt. 374; after payment of the local administration expenses, Williams *v.* Williams, 5 Md. 467; and debts, Richards *v.* Dutch, 8 Mass. 506; and especially where there are no creditors in the ancillary jurisdiction, Sanford *v.* Thompson, 18 Ga. 554; or where the debts due there have been paid in full. Ordroneaux *v.* Helie, 3 Sandf. 512; Tucker *v.* Condy, 10 Rich. Eq. 12. And the court may order assets of the ancillary administrator to be retained for the purpose of paying debts not accruing within two years after testator's death. Newell *v.* Peaslee, 151 Mass. 601. The administrator of the domicil may be sued by creditors in his own jurisdiction for assets collected by him from the ancillary administrator in a foreign jurisdiction. Pratt *v.* Northam, 5 Mason 95. But cannot sue the ancillary administrator in the courts of the ancillary jurisdiction for such balance. Carmichael *v.* Ray, 5 Ired. Eq. 365. The ancillary administrator may make distribution in his own jurisdiction instead of remitting the balance to the domicil of the intestate. Cassilly *v.* Meyer, 4 Md. 1; Estate of Adlum, 6 Phila. 347. In New York, he is required by statute (Code C. P. § 2700) to transmit the balance in hand to the place of the principal administration, unless otherwise directed by the surrogate.

For the protection of their own citizens it has been held in some states that debts are to be paid in the ancillary administration according to the local law, the payment of legacies and distributive shares being governed by the law of the domicil. Jones *v.* Gerock, 6 Jones Eq. 190. And in Vermont, creditors of the foreign domicil were formerly not allowed to prove their claims in the ancillary administration. Churchill *v.* Boyden, 17 Vt. 319. But the rejection in the ancillary jurisdiction of the claim of a creditor resident in the domicil is no bar to its presentment in the latter jurisdiction. Taylor *v.* Barron, 35 N. H. 485. In other states, with more reason and justice, creditors domestic and foreign are put on the same footing. Findley *v.* Gidney, 75 N. C. 395. So, now by statute, in *Maine* (1883 R. S. c. 65, §§ 37–38), *Massachusetts* (1882 P. S. c. 138, §§ 3–5), *Missouri* (1889 R. S. §§ 261–74), *New Hampshire* (1891 P. S. c. 192, §§ 27–29), *New York* (Code C. P. §§ 2700–01), *Vermont* (1880 R. L. § 3192). In Maine and Massachusetts, the statute expressly provides for the reckoning and payment of the *pro rata* share to the resident creditors as if "the whole estate wherever found" were so divided without any preference. This is substantially so in New York also. And see Despard *v.* Churchill, 53 N. Y. 192; Parsons *v.* Lyman, 20 N. Y. 103. And even where the ancillary assets are sufficient to pay the local creditors in full, but the estate as a whole is insolvent, local creditors will only receive their *pro rata* share, and the balance be remitted to the domicil for final settlement. Dawes *v.* Head, 3 Pick. 127; Davis *v.* Estey, 8 Pick. 475.

As to the transmission of assets

and the local law governing their distribution, see Vol. II. p. 925, *ubi supra*. In general, legatees must look for payment to the administration of the domicil. Richards *v.* Dutch, 8 Mass. 506; Probate Court *v.* Kimball, 42 Vt. 320. As to the local law governing the payment and preference of debts, see *ubi supra*, Vol. II. p. 210 n.

Action against foreign administrator. A foreign administrator cannot be sued at law in the jurisdiction of the domicil for assets administered by him in the foreign jurisdiction. Vermilya *v.* Beatty, 6 Barb. 429. Even local creditors cannot sue him, although he has voluntarily moved his residence into the jurisdiction and brought foreign assets with him. Hedenberg *v.* Hedenberg, 46 Conn. 30. A foreign administrator will not, in general, be required to account here for foreign assets received by him, Norton *v.* Palmer, 7 Cush. 523; Brownlee *v.* Lockwood, 5 C. E. Gr. 239; even where letters have been granted to the same person in both places, Banta *v.* Moore, 2 McCart. 97; and the foreign jurisdiction is the ancillary one; Normand *v.* Grognard, 2 C. E. Gr. 425. So, although he has paid the foreign creditors, and has sufficient balance in hand to satisfy all creditors, and has taken out ancillary letters here. Fay *v.* Haven, 3 Met. 109. He may, however, be required to account for assets received without local letters in the jurisdiction of the court, Campbell *v.* Tousey, 7 Cow. 64; or brought from his own jurisdiction, McNamara *v.* Dwyer, 7 Paige 239; and in equity for the protection of local legatees, Tunstall *v.* Pollard, 11 Leigh 1; *e. g.*, on proof of diversion of funds, the estate and the person both being within the jurisdiction. Montalvan *v.* Clover, 32 Barb. 190. And in a court of equity he may be called to account anywhere, Bryan *v.* McGee, 2 Wash. C. C. 337; but not as such in form. Sparks *v.* White, 7 Humph. 86. And the Probate Court may require assets in the possession of persons in another state who are properly before the court to be handed over to the administrator of the forum. Dietz's Case, 14 Stew. (N. J.) 284. But even a court of equity could not, in the absence of an ancillary administration, take foreign assets from a foreign custodian and place them in the hands of the local administrator. Lines *v.* Lines, 142 Pa. St. 149.

Trust property. Where an express trust is created by will and no trustee appointed, it is the duty of the executor to take charge of the property until such appointment is made. Casperon *v.* Dunn, 15 Stew. (N. J.) 87. On the other hand, he is not chargeable with funds vested by the will in another trustee, unless there is a surplus payable to, and not collected by, him, Estate of Conklin, 2 Connoly 176; or where the trustee is only entitled to possession through the executor after payment of debts (in which case the executor's sureties are liable for the fund). Woodfin *v.* McNealy, 9 Fla. 256.

Where the deceased was himself a trustee, and the trust property can be identified as such, it will not belong to the assets of his estate to be accounted for as such. Trecothick *v.* Austin, 4 Mason 16; United States *v.* Cutts, 1 Sumn. 133; Rowley *v.* Fair, 104 Ind. 189. This is true of funds held as administrator of another person, McCustian *v.* Ramey, 33 Ark. 141; or as guardian, Governor *v.* Crane, 19 Fla. 163; or attorney (money collected), Schoolfield *v.* Rudd, 9 B. Mon. 291; or consignee, De Valengin *v.* Duffy, 14 Pet. 282; Hutchinson *v.* Reed, Hoffm. Ch. 316; or master of a vessel (freight money collected), Thompson *v.* White, 45 Me. 445; or treasurer of a public trust fund,

Attorney General *v.* Brigham, 142 Mass. 248; or a bank deposit book "in trust for A.," Matter of Collyer, 4 Dem. 24; or a life insurance policy (payable to the executor for the benefit of the widow), Matter of Van Dermoor, 42 Hun 326; or a check payable to the testator "for A." Matter of Van Duzer, 51 How. Pr. 410. So, where stock belonging to the executor was held by his testator as collateral for his debt. Squier *v.* Squier, 3 Stew. (N. J.) 627.

Trust property in the hands of the deceased trustee is not liable for his individual debts, Bacon *v.* Bacon, 51 Conn. 19; and cannot be sold for their payment. Coverdale *v.* Aldrich, 19 Pick. 391. The legal estate vests, however, in the personal representative of the trustee, Gulick *v.* Bruere, 15 Stew. (N. J.) 639; and the property should be inventoried, and his sureties are liable therefor. Dawes *v.* Boylston, 9 Mass. 337. Even a bank account of the deceased as "administrator of A." vests in the representatives of the deceased. Slaymaker *v.* Farmers' Bank, 103 Pa. St. 616. So, a bank deposit by the deceased "in trust for A." may be paid to the administrator on surrender of the pass book, Boone *v.* Citizens' Savings Bank, 84 N. Y. 83; and the interest of the designated depository may be disproved by parol evidence. Parkman *v.* Suffolk Savings Bank, 151 Mass. 218. The trust fund or property may be transferred by him in furtherance of the trust. Wetmore *v.* Hegeman, 88 N. Y. 69. And the Probate Court will order a transfer of a book account of the deceased "A. for B." to B.'s personal representatives on their application. Gaffney *v.* Public Administrator, 4 Dem. 223. And even where the trust is not such as to protect the property from the creditors of the deceased holder, the executor cannot recover it from the possession of the equitable owner, if it is not required for debts. Woodhouse *v.* Phelps, 51 Conn. 521. If the trust property is clearly identified, it may be turned over at once to the successor in the trust. Rowley *v.* Fair, 104 Ind. 189.

So A.'s representatives (as the party in interest) cannot recover from the bank a deposit made by A., "in trust for B.," Willis *v.* Smyth, 91 N. Y. 298; nor on a bond made to "A., administrator of B.," without proof of a change of title to A. in his own right. Ballinger *v.* Cureton, 104 N. C. 474. See, *contra*, Saffold *v.* Banks, 69 Ga. 289.

Where the trust property has lost its identity, the *cestui que trust* is left to his remedy as a general creditor of the estate, Fowler *v.* True, 76 Me. 43; Attorney General *v.* Brigham, 142 Mass. 248; Johnson *v.* Ames, 11 Pick. 172; Matter of O'Brien, 45 Hun 284; and the administrator who has treated it as assets must account for it as such. Matter of Hobson, 16 N. Y. Supp. 371. And if it has been applied in good faith by the executors of the deceased trustee to the uses of the estate, the executors will be protected, Mulford *v.* Mulford, 13 Stew. (N. J.) 163; and will not be individually liable to the *cestui que trust*. Colt *v.* Houdlette, 70 Me. 308. But even where the administrator is himself the *cestui que trust*, his proving his claim as a debt will not estop him from following the specific fund on proof of its identity. Buckley *v.* Buckley, 157 Mass. 536. See, *contra*, Johnson *v.* Ames, 11 Pick. 173, where his claim as creditor had been rejected for laches.

Legal and equitable assets. In the United States there is practically no distinction between equitable and legal assets. Schouler on Exrs. § 221; Woerner on Admn. § 313; Estate of Sperry, 1 Ashm. 347. Proceeds of land sold under a power of sale for the payment of legacies are now legal assets. Hood *v.* Hood, 85 N. Y. 561;

Bloodgood *v.* Bruen, 2 Bradf. 8. So, an agreement for the purchase of land to be conveyed to deceased or his assignee goes to the administrator. Douglass *v.* Hennessy, 15 R. I. 272. If he cannot perform it, he may assign it to a son on his reimbursing the estate for the amount of purchase money paid by the testator in his lifetime. Hendrickson *v.* Hendrickson, 14 Stew (N. J.) 375. A debt due to a *cestui que trust* and secured by trust deed goes to his personal representatives. Curry *v.* Hill, 18 W. Va. 370; Succession of Sparrow, 39 La. An. 696. And an equitable claim for a mother's support charged on property given to the children entitles her administrator to an accounting for the personal property charged. McFall *v.* McFall, 35 S. C. 559.

Power of appointment. Where property is given in trust for A. for life, with remainder as he should appoint, it is assets of his estate in the hands of his appointees and subject to his debts, Clapp *v.* Ingraham, 126 Mass. 200; but under the New York statute (1 R. S. 732, § 73) abolishing common-law powers this is not true. Cutting *v.* Cutting, 86 N. Y. 522. So, at common law, where the power of appointment is not exercised. Coverdale *v.* Aldrich, 19 Pick. 391. But moneys payable under a benefit policy to the widow and children, or other appointees with proviso that it should never be liable for his debts, are not assets of the deceased in the hands of his executor. Bishop *v.* Curphey, 60 Miss. 22. And moneys bequeathed by a resident of Maryland to a resident of Pennsylvania for life, with power of appointment, are not assets, in Pennsylvania, nor subject to the inheritance tax of that state on the execution of the power of appointment by the legatee. Commonwealth *v.* Duffield, 12 Pa. St. 277.

Real or personal assets. The availability of real property of the decedent as a fund for the payment of debts will be considered in the next chapter. Property may, however, partake of, or be closely connected with, the realty, and still be strictly personal property. Such are stock in a turnpike company, Welles *v.* Cowles, 4 Conn. 182; moneys paid after testator's death for land sold by him in his lifetime, Loring *v.* Cunningham, 9 Cush. 87; Sutter *v.* Ling, 25 Pa. St. 466; Matter of Everitt, 2 Edw. 597; or a vendor's lien for such moneys, Costephens *v.* Dean, 69 Ala. 385; surplus proceeds of land conveyed by the deceased in trust to secure a debt, and sold by the trustee after the death of the grantor, Jones *v.* Lackland, 2 Gratt. 81; proceeds of a policy of fire insurance on real property on a loss by fire after the death of the insured, Georgia Home Insurance Co. *v.* Kinnier, 28 Gratt. 88; damages for condemnation of lands in the owner's lifetime for a highway, Welles *v.* Cowles, 4 Conn. 182; Goodwin *v.* Milton, 25 N. H. 458; City of Detroit *v.* Schilling, 93 Mich. 429; and see Vol. II. p. 24, *ubi supra.* So growing crops, *Alabama* (Code, § 2439); Loeb *v.* Richardson, 74 Ala. 311; Humphrey *v.* Merritt, 51 Ind. 197; and see Vol. I. p. 843, *ubi supra;* or a leasehold, Merryman *v.* Long, 49 Md. 540; Prevost *v.* Abercrombie, 46 Mo. 172; and see Vol. I. p. 817, *ubi supra;* or a lease securing purchase money of lands sold by decedent, Johns Hopkins University *v.* Williams, 52 Md. 229; or a mortgage, Palmer *v.* Stevens, 11 Cush. 147; and see Vol. I. p. 818, *ubi supra;* or the mortgage lands themselves, when bought in by the executor in a foreclosure proceeding, Haberman *v.* Baker, 128 N. Y. 253; or conveyed to the executor to save the cost of foreclosure. Barclay *v.* Cooper, 15 Stew (N. J.) 516. On the other hand, a church pew goes as real property to the heir, and not to the executor. McNabb *v.* Pond, 4 Bradf. 7.

*CHAPTER THE SECOND.

OF REAL ASSETS: AND OF THE EXONERATION OF THE REAL ESTATE BY THE PERSONAL: AND HEREWITH OF THE MARSHALING OF ASSETS.

SECTION I.

Of Real Assets, and therewith of the Exoneration of the Real Estate by the Personal.†

Real assets in the hands of the heir:

Besides the liability of the executor or administrator in respect of the personal assets in his hands, the heir of the deceased is liable, at the common law, to the extent of the real assets descended, for the payment of his ancestor's debts of a certain quality; *viz.*, those due on bonds, covenants, or other specialties, in cases where the deceased bound himself and his heirs (*a*).

It is not thought necessary to discuss, in this place, what portion of the real property of the deceased the law regards as assets by descent; nor to investigate the circumstances under which the real assets are to be considered as legal or equitable: Questions of this nature are rather matters between the heir and the creditors, than relative to the office of an *executor or administrator, and therefore appear foreign to the subject of this treatise.

Creditors by specialties which affected the heir, provided he had

† See American note at end of this section.

(*a*) The heir is also liable on a judgment recovered against his ancestor, or a recognizance acknowledged by him: but he is chargeable only as *tenant of the land* and not as heir: and therefore an action of debt does not lie against him on the judgment or recognizance, as it does on the bond of his ancestor, but a *scire facias* only to have execution of the lands in his hands: 2 Saund. 7, note (4) to Jeffreson *v.* Morton. Although *scire facias* is not in terms abolished by the Judicature Act, yet Ord. XLII. r. 23 is apparently intended to be substituted for it, at all events it is an alternative remedy.

assets by descent, had not, at common law, the same remedy against the devisee of their debtor. To obviate this mischief, the statute of 3 Wm. & M. c. 14, passed: which has been repealed and re-enacted with additional provisions calculated to remedy certain omissions in the former statute. By statute 1 Wm. IV. c. 47, after reciting that "it is not reasonable or just that by the practice or contrivance of any debtors their creditors should be defrauded of their just debts, and nevertheless it hath often so happened, that where several persons having, by bonds, *covenants* (*b*), or other specialties, bound themselves and their heirs, and have afterward died seised in fee-simple of and in manors, messuages, lands, tenements, and hereditaments, or had power or authority to dispose of or charge the same by their Wills or testaments, have, to the defrauding of such their creditors, by their last Wills or testaments, devised the same or disposed thereof in such manner as such creditors have *lost their said debts;" it is, by section 2, enacted, "that all Wills and testamentary limitations, dispositions, or appointments, already made by persons now in being, or hereafter to be made by any person or persons, whomsoever, of or concerning any manors, messuages, lands, tenements, or hereditaments, or any rent, profit, term, or charge out of the same, whereof any person or persons, at the time of his, her, or their decease, shall be seised in fee-simple, in possession, reversion, or remainder, or have power to dispose of the same

of the devisee:

1 W. 4, c. 47.

1 W. 4, c. 47.

For remedying frauds committed on creditors by wills.

(*b*) The former statute, giving the specialty creditor a remedy against the devisee, (3 W. & M. c. 14,) did not extend to damages for breaches of covenant or contracts under seal made by the testator; and it was therefore held, that an action of covenant did not lie upon the statute against the heir and devisee to recover damages for a breach of covenant made by the devisor, but the remedy thereby given was confined to cases where debt lies: Wilson *v.* Knubley, 7 East, 128. It was further held, in the construction of the old statute, that it applied only where a *debt*, in the ordinary sense of the word, existed between the parties in the lifetime of both; and therefore that an action of debt did not lie against the devisee of a surety in respect of breaches of covenant which did not occur in the lifetime of the testator, even though the damages were liquidated so that in form they might be sued for in an action of debt: Farley *v.* Briant, 3 A. & E. 839. But such damages, though not a debt within this statute, are a debt payable out of the real estate of the testator, under a charge of debts thereon created by his will: Morse *v.* Tucker, 5 Hare, 79. And a debt due on a covenant, though it be *debitum in præsenti solvendum in futuro*, was held to be within the statute; Coope *v.* Cresswell, L. R. 2 Eq. 106, *coram* Kindersley, V.-C. L. R. 2 Ch. 112.

[*1555]

(*c*) by his, her, or their last Wills or testaments, shall be deemed or taken (only as against such person or persons, bodies politic or corporate, and his and their heirs, successors, executors, administrators, and assigns, and every of them, with whom the person or persons making any such Wills or testaments, limitations, dispositions, or appointments, shall have entered into any bond, *covenant* or other specialty, binding his, her, or their heirs), to be fraudulent, and clearly, absolutely, and utterly void, frustrate, and of none effect (*d*); any pretense, color, feigned or presumed consideration, or any other matter or thing to the contrary notwithstanding."

Enabling creditors to recover on bonds, &c.

Sect. 3. "For the means that such creditors may be enabled to recover upon such bonds, *covenants*, and other specialties, be it further enacted, that in the cases before mentioned every such creditor shall and may have and maintain his, her, and *their action and actions of debt or *covenant* upon the said bonds, covenants, and specialties against the heir and heirs-at-law of such obligor or obligors, covenantor or covenantors, and such devisee and devisees (*e*), or the

1 W. 4, c. 47.

(*c*) This statute extends to cases of devisees not only where the devisor is seised in fee, but where he has the power to dispose of the subject-matter of the devise, which in terms includes every beneficial interest which he may possess. And the devisee of an equitable estate seems liable to an action of debt by the creditors of the devisor under the 3rd section of the act, where the words "such devisee and devisees" can only refer to the 2nd section, which applies to devises of every description of estate, legal or equitable; and upon a judgment obtained in such an action, execution may be taken out against the equitable devisee by the 10th section of the Statute of Frauds; Coope *v.* Cresswell, L. R. 2 Ch. 112, 121, *per* Ld. Chelmsford.

(*d*) It is not necessary to make the devise void that the intent of the devise was to defraud or hinder or delay creditors: Coope *v.* Cresswell, L. R. 2 Eq. 106.

(*e*) Equitable estates are within the statute, and the devisees, who as trustees have the legal estate, must be made defendants, but if there has been no alienation by them, they, personally, will not be liable, but upon a judgment obtained against them execution may be had against the whole estate. Alienation by the person having the beneficial interest will not prevent the action, but upon a judgment obtained against the legal devisees execution may be had against the whole estate, but if any beneficial interest in it has been *bona fide* aliened before action (or rather judgment), equity would prevent the interest so aliened being affected by the execution; Coope *v.* Cresswell, L. R. 2 Ch. 112.

The right of a specialty creditor under Wm. 4, c. 47, seems to be a legal right. But his right is, until judgment, liable to be postponed to that of a prior alienee, even with merely an equitable title; British Mutual Investment Co. *v.* Smart, L. R. 10 Ch. 567.

[*1556]

devisee or devisees of such first-mentioned devisee or devisees jointly by virtue of this Act: and such devisee and devisees shall be liable and chargeable for a false plea by him or them pleaded, in the same manner as any heir should have been for any false plea by him pleaded, or for not confessing the lands or tenements to him descended" (*f*).

Sect. 4. "If in any case there shall not be any heir-at-law against whom, jointly with the devisee or devisees, a remedy is hereby given, in every such case, every creditor to whom by this Act relief is given, shall and may, have and maintain his, her, and their action and actions of debt or covenant, as the case may be, against such devisee or devisees solely; and such devisee or devisees shall be liable for false plea as aforesaid" (*g*).

If there is no heir-at-law, action may be maintained against the devisee.

Sect. 6. "In all cases where any heir-at-law shall be liable to pay the debts or perform the covenants of his ancestors in *regard of any lands, tenements, or hereditaments descended to him, and shall sell, alien, or make over the same, before any action brought or process sued out against him, such heir-at-law shall be answerable for such debt or debts, or covenants, in an action or actions of debt or covenant to the value of the said lands so by him sold, aliened, or made over, in which cases all creditors shall be preferred, as in actions against executors and administrators, and such execution shall be taken out upon any judgment or judgments so obtained against such heir, to the value of the said land, as if the same were his own proper debt or debts; saving that the lands, tenements, and hereditaments, *bona fide* aliened (*h*) before the action brought, shall not be liable to such execution."

Heir-at-law to be answerable for debts

1 W. 4, c. 47.

although he may sell the estate before action brought.

Sect. 8. "All and every the devisee and devisees made liable by this Act shall be liable and chargeable in the same manner as the heir-at-law by force of this Act, not-

Devisees to be liable the same as heirs-at-law.

(*f*) The mere liability of the devisee to be sued under this act does not make the debt his debt: Re Taylor's Estate, 8 Exch. 384.

(*g*) Under the stat. of Wm. & M., the specialty creditor could not maintain an action against the devisee alone, there being no heir: Hunting *v.* Sheldrake, 9 M. & W. 256.

(*h*) A conveyance by old to new trustees is not such an alienation as would prevent the action: nor is a mortgage by an equitable tenant for life such an alienation, though a Court of Equity would protect the mortgaged interests against execution: Coope *v.* Cresswell, L. R. 2 Ch. 112.

[*1557]

withstanding the lands, tenements, and hereditaments to him or them devised, shall be aliened before the action brought" (*i*).

Traders' estates shall be assets to be administered in Courts of Equity.

Sect. 9 made the real property of a deceased trader *assets to be administered in Courts of Equity for the benefit of creditors by simple contract or by specialty as they are for the benefit of creditors by specialty where the heirs were bound.

3 & 4 W. 4, c. 104.

The principle was extended further, by the stat. 3 & 4 Wm. IV. c. 104, which after reciting that it is expedient that "the payments of the debts of all persons shall be secured more effectually," it is enacted, "that from and after the passing of this Act (29th Aug. 1833), when any person shall die seised of or entitled to any estate or interest in lands, tenements, or hereditaments, corporeal or incorporeal, or other real estate, whether freehold, customary-hold, or copyhold, which he shall not by his last Will have charged with or devised subject to the payment of his debts (*ii*), the same shall be assets to be administered in Courts of Equity for the payment of the just debts of such persons, as well debts due on simple contract as on specialty (*j*); and that the heir or heirs-at-law, customary heir or heirs, devisee or devisees of such debtor, shall be liable to all the same suits in

Freehold and copyhold estates of persons dying after 29th August, 1833, in all cases to be assets for the payment of simple contract or specialty debts.

(*i*) The liability under this act of a devisee of land, who alienates the land, to the unpaid debts of the testator, is such that on the alienation the debts become his own debts to the extent of the land alienated. Consequently where a woman to whom land had been devised, settled it on her marriage, after the passing of the Married Women's Property Act, 1870, the first trust being for herself absolutely until the marriage, and after its solemnization on trust for herself for life without power of anticipation, with remainder on trusts for the issue of the marriage; it was held that the testator's personal estate being insufficient to pay his debts, the life interest of the settlor was notwithstanding the restraint on anticipation, liable to make good the deficiency to the extent of the value of the devised land: her liability to satisfy the debts of the testator, which arose on her alienation of the land by the settlement, being a debt "contracted by her before marriage" within the meaning of section 12 of the Married Women's Property Act, 1870. Re Hedgeley, 34 C. D. 379.

(*ii*) See Ball *v.* Harris, 4 My. & Cr. 268.

(*j*) Freeholds, over which a testator has a general power of appointment, and which he appoints by a last will, are within this act (but are only applicable as assets after all the testator's own property has been previously so applied): Fleming *v.* Buchanan, 3 De G. M. & G. 976.

[*1558]

equity (*k*), at the suit of any of the *creditors of such debtor, whether creditors by simple contract or by specialty, as the heir or heir-at-law, devisee or devisees of any person or persons who died seised of freehold estates was or were before the passing of this Act liable to in respect of such freehold estates, at the suit of creditors by specialty in which the heirs were bound: Provided always, that in the administration of Assets by Courts of Equity, under and by virtue of this Act, all creditors by specialty in which the heirs are bound shall be paid the full amount of the debts due to them before any of the creditors by simple contract or by specialty, in which the heirs are not bound, shall be paid any part of their demands" (*l*).

It was held by Sir L. Shadwell, V.-C., in Spackman *v.* Timbrell (*m*), that the repealed statutes (3 W. & M. c. 14, and 47 Geo. III. sess. 2, c. 74) did not specifically charge the real assets descended or devised with the debts of the ancestor, but made the heir or devisee liable, *personally*, to answer for the value of the assets descended or devised: Therefore where H., who was a trader at his death, and indebted by specialty and simple contract, devised freehold estates to his son in fee; and the son, on his marriage, settled the estates on his wife and children, and afterward died,

The statutes 1 W.4, c. 47, and 3 & 4 W.4, c. 104, do not specifically charge the real assets, but make the heir or devisee personally liable.

(*k*) A simple contract creditor cannot get a judgment giving him a priority; he can only get a judgment as against the heir-at-law, which will put the court in a position to administer the real estate for the benefit of all the creditors, and under that judgment all the simple contract creditors would rank *pari passu* amongst themselves. That being so, the foundation of the rule allowing retainer to an heir-at-law when he was a specialty creditor, or allowing retainer to an executor (Walters *v.* Walters, 18 C. D. 182) out of personal estate is gone, but an heir-at-law or devisee may retain a debt to which he is entitled by specialty in which the heirs are bound, because the legal right of action of creditors by specialty in which the heirs are bound continues notwithstanding Hinde Palmer's Act, 32 & 33 Vict. c. 46: and such creditor could thereby obtain priority over the heir or devisee if the right of retainer were not allowed to him: Re Illidge, 27 C. D. 478: Ferguson *v.* Gibson, L. R. 14 Eq. 379.

(*l*) It was held formerly that by virtue of this proviso a creditor by bond, in which the heirs are named, must be paid before a creditor by bond in which they are not named: Richardson *v.* Jenkins, 1 Drewr. 477: Foster *v.* Handley, 1 Sim. N. S. 200. Re Burrell, L. R. 9 Eq. 443; but this proviso would seem in effect to be repealed by Hinde Palmer's Act, 32 & 33 Vict. c. 46, which, however, would seem to leave untouched the rights of a specialty creditor on a specialty binding the heir who has obtained judgment prior to the commencement of the administration action: Re Illidge, 27 C. D. 478.

(*m*) 8 Sim. 253.

his Honor decided that the son's widow and children were entitled to hold the estates discharged from the debts of the father. So in Richardson *v.* Horton (*n*), a settlement by the heir, upon his marriage, of the ancestor's estates was supported against the claims of the specialty creditors of such ancestor: And Lord Langdale, M.R., laid down that, though by taking *proper proceedings, the specialty creditors may obtain payment out of the descended or devised real estate in the hands of the heir or devisee, yet if such proceedings are not taken, the heir or devisee may alienate, and in the hands of the alienee, the land is not liable, though the heir or devisee remains personally liable, to the extent of the value of the land alienated. And there does not appear to be any reason why these decisions should not be applied to the construction of the statutes now in operation (1 Wm. IV. c. 47, and 3 & 4 Wm. IV. c. 104) (*o*).

*Neither at law nor in equity is any charge created until judgment

(*n*) 7 Beav. 112.

(*o*) See the observations of Lord Cottenham in Pimm *v.* Insall, 1 Mac. & G. 449, 458; and of Romilly, M.R., in 22 Beav. 21, 22. See also Dilkes *v.* Broadmead, 2 Giff. 113. A covenant by an infant heiress and her intended husband, in marriage articles, to settle the descended estate on the issue of the marriage, is not an alienation such as to withdraw the estate from the claim of the ancestor's creditors: Pimm *v.* Insall, 1 Mac. & G. 449, 7 Hare, 193. Nor is a judgment entered up against an heir such an alienation: Kinderley *v.* Jervis, 22 Beav. 1. An equitable deposit with memorandum of charge by a legal devisee is an alienation, which *pro tanto* prevents a creditor of a testator from subsequently obtaining a charge on the estate as assets under 3 & 4 Wm. 4, c. 104. British Mutual Investment Co. *v.* Smart, L. R. 10 Ch. 567. It has been held that the stat. 3 & 4 Wm. 4, c. 104, makes the lands themselves, and not merely the estate or interest of the deceased, assets for the payment of his debts: Therefore if he dies without heirs, they are made assets against the lord claiming by escheat, notwithstanding his right is by title paramount: Evans *v.* Brown, 5 Beav. 114. Downe *v.* Morris, 3 Hare, 399. Hughes *v.* Wells, 9 Hare, 749. It has also been held, that the act charges the real estate of the deceased owner (where no such charge has been made by will), not only with debts of every description actually due at his death, but also with all liabilities which may result out of the obligations entered into by him during his life: Hamer's Devisees' Case, 2 De G. M. & G. 366, overruling the decision in 3 De G. & Sm. 279. See also Beale *v.* Symonds, 16 Beav. 406. In order to obtain a decree for a sale for payment of the debts it is not necessary that the bill should be filed by a creditor: Dinning *v.* Henderson, 2 Coll. 330. Price *v.* Price, 15 Sim. 484. Rodney *v.* Rodney, 16 Sim. 307. But the legal personal representative ought not to be sole plaintiff: Tubby *v.* Tubby, 2 Coll. 136. Catley *v.* Sampson, 33 Beav. 551. The widow's right to dower is not affected by the Act: Spyer *v.* Hyatt, 20 Beav. 621.

[*1560] [*1561]

is obtained and the claim of a creditor under 3 & 4 Will. IV. c. 104, being a claim under an administration in equity, a prior equitable alienee will take precedence over the equitable judgment creditor (*p*).

It is, however, a well-known rule, that, as between the real and personal representatives of all persons deceased, the personal estate in the hands of the executor or administrator is the primary and natural fund, which must be resorted to in the first instance for the payment of debts, of every description, contracted by the testator or intestate.†

Primary liability of personal estate to debts of every description:

But it is clear, that this principle can only regulate the equitable administration of assets, and does not extend to the legal control of the creditor of the deceased; for it is discretionary with him, if his debt is of a nature to bind both the real and personal estate, whether he will resort to the personal estate in the hands of the executor, or to the real estate descended or devised: Hence, if the obligee of a bond bring an action of debt against the heir, he cannot plead that there is an executor who has assets (*q*).

In order, therefore, to support and enforce the primary liability of the personal estate, as between the representatives of the deceased debtor, it is an established rule in equity, that if the creditor proceeds against the real estate, descended or devised, the heir or devisee, who has sustained the loss, shall be allowed to stand in the place of the specialty creditor, to *reimburse himself out of the personal estate in the hands of the executors (*r*): Provided such reimbursement will not prej-

consequent right of heir or devisee to have the real estate exonerated by the personal;

(*p*) British Mutual Investment Co. *v.* Smart, L. R. 10 Ch. 567.

† See American note at end of this section.

(*q*) Bro. Assets *per* Descent, 33 Davy r. Pepys, Plowd. 439 *b*. Quarles *v.* Capell, Dyre, 204 *b*. Davies *v.* Churchman, 3 Lev. 189. Galton *v.* Hancock, 2 Atk. 426. And since as against the executor personal estate is the primary fund for the payment of debts, it follows that, in a case where the specialty debts exceed the personal estate, the executor can have no right of retainer in respect of a simple contract debt, even though the specialty debts may in fact have been paid out of the proceeds of real estate administered under 3 & 4 Wm. 4, c. 104: Walters *v.* Walters, 18 C. D. 182.

(*r*) Treat. Eq. B. 3, c. 2, s. 1. Accordingly, where a person domiciled in England, who was indebted in money upon bond, died intestate leaving real estate in Scotland, and the bond debts were paid by the heir out of the produce of the real estate in Scotland; Lord Langdale, M.R., held, that the right of relief or demand against the personal estate, which, by the law of Scotland is given to the heir who has paid movable debts, is capable of being made

[*1562

udice *any of the creditors, or any other party having an equal or more favored claim* than the heir or devisee respectively.

Thus, if the testator enters into a bond for himself and his heirs, and dies, and the obligee proceeds against the heir, and compels him to pay the debt out of the real assets, the heir may recover it out of the assets in the hands of the executor (*s*). And this exoneration is extended not only to the *hæres natus*, the heir-at-law, but also to the *hæres factus*, the general devisee (*t*), or a particular devisee (*u*).

Again, it is discretionary with a mortgagee, whether he will proceed, for the recovery of his mortgage debt, against the mortgaged land which has come to the heir or devisee of the mortgagor, or against his executor: But if the mortgagee recovers against the land, the heir or devisee shall (unless the case is within the operation of the stat. 17 & 18 Vict. c. 113 (*uu*)), be reimbursed out of the personal estate of the mortgagor (*x*).

available in England: Lord Winchelsea *v.* Garetty, 2 Keen, 293. And in all cases, where, in the course of administrations in different countries, the question arises whether particular debts are properly and ultimately payable out of the personal estate, or are chargeable on the real estate of the deceased, the law of his domicil will govern, in cases of intestacy, and, in cases of testacy, his intention: Story's Confl. Ch. xiii. s. 528.

(*s*) Armitage *v.* Metcalfe, 1 Chanc. Cas. 74. Anon. Chanc. Cas. 5. Treat, Eq. B. 3, c. 2, s. 1.

(*t*) Lutkins *v.* Leigh, Cas. temp. Talb. 54.

(*u*) Pockley *v.* Pockley, 2 Chanc. Cas. 84. Galton *v.* Hancock, 2 Atk. 436. Fonbl. Treat. Eq. B. 3, c. 2, s. 3, note (*e*).

(*uu*) *Post*, p. *1570.

(*x*) Cope *v.* Cope, 2 Salk. 449. Howell *v.* Price, 1 P. Wms. 292. Johnson *v.* Milksopp, 2 Vern. 112. Lutkins *v.* Leigh, Cas. temp. Talb. 54. Galton *v.* Hancock, 2 Atk. 436. And it will make no difference, that the devise is of the lands *subject to the incumbrances thereon;* for such a qualification is no more than what is implied, since the testator could not devise them otherwise: Serle *v.* St. Eloy, 2 P. Wms. 386. Bickham *v.* Cruttwell, 3 Mylne & Cr. 769. Hickling *v.* Boyer, 3 Mac. & G. 643, by Lord Truro. Accordingly where a testator directed estates to be sold, and the produce to be applied in payment of the mortgages due from him, and the residue of the produce to be considered and applied as part of the residue of his personal estate; and he gave and devised the residue of his real and personal estate upon trust, after payment of his just debts, for the benefit of all his children; and the testator afterward by a codicil, confined the residuary gift of the produce of the estates directed to be sold to his younger children; it was held, that the devisees of the produce of the real estate directed to be sold were entitled to have the personal estate applied in payment of the mortgages; because the gift was in effect a gift of the estates, subject to the mortgages; and the gift of an estate subject to a mortgage, does not deprive the devisee of the right to satisfaction of the

*But the land cannot be exonerated out of the personal estate to the prejudice of any person having a prior claim to be satisfied: And therefore the heir or devisee shall not stand in the place of the mortgagee against the personal assets, if by so doing he would disappoint any creditor (*y*) or any legatee, except the residuary legatee (*z*), or the widow's claim to *paraphernalia* (*a*).

but not to prejudice a person having prior claim to satisfaction.

*It has, indeed, been laid down, as a general proposition, that the equity, to have the personal estate applied to the exoneration of the real, subsists only between the heir or devisee, and the residuary legatee, and not against specific or general legatees (*b*). And this is unquestionably true with respect to the exoneration of the heir (*c*). But it appears to be clear that if a creditor, with a *general* lien on the land, as a mere bond creditor, recovers the bond debt against the real estate *devised*, the devisee will be entitled to exoneration out of the personal estate, to the disappointment of general legacies (*d*).

mortgage out of the personal estate: Wythe *v.* Henniker, 2 M. & K. 635. But where a testator having an estate subject to a mortgage of 4,460*l.* created by himself, devised it to A. B. in fee, "he paying the mortgage thereon;" and devised his residuary real and personal estates to trustees for the payment of his debts, and he gave to the mortgagees, through the medium of his executors, 2,000*l.* to exonerate the estate; it was held that the words "he paying the mortgage thereon," imposed a duty on the devisee and amounted to a direction or condition that he should pay the mortgage, or take the estate subject to the burden upon it, so far as the same exceeded 2,000*l.*: Lockhart *v.* Hardy, 9 Beav. 379. See also Goodwin *v.* Lee, 1 Kay & J. 377. Hatch *v.* Skelton, 20 Beav. 453.

(*y*) Bartholomew *v.* May, 1 Atk. 487.

(*z*) Oneal *v.* Mead, 1 P. Wms. 693. Lutkins *v.* Leigh, Cas. temp. Talb. 53. Davis *v.* Gardiner, 2 P. Wms. 190. Rider *v.* Wager, 2 P. Wms. 335. *A fortiori*, a specific legatee of a mortgaged leasehold shall not have contribution toward his mortgage from other specific legatees of leasehold: Halliwell *v.* Tanner, 1 Russ. & M. 633. Wythe *v.* Henniker, 2 M. & K. 635. Johnson *v.* Child, 4 Hare, 87; *Secus*, where a contrary intention is apparent: Middleton *v.* Middleton, 15 Beav. 450.

(*a*) Tipping *v.* Tipping, 1 P. Wms. 736. *Ante*, p. *678, note (*g*).

(*b*) Hamilton *v.* Worley, 2 Ves. Jun. 65. Fonbl. Treat. Eq. B. 3, c. 2, s. 3, note (*e*).

(*c*) Lutkins *v.* Leigh, Cas. temp. Talb. 54. Snelson *v.* Corbett, 3 Atk. 369.

(*d*) It is clear that general legatees cannot marshal the assets so as to stand in the place of a mere bond creditor against the land *devised:* See *post*, p. *1588: And therefore it seems to follow, that the devisee shall be exonerated out of the general legacies; besides if it were otherwise, it would have the effect of making a devisee of land, who in every case is as much a specific devisee as a legatee of a specific legacy, bear the burden of the debt before the general pecuniary legatees.

[*1563] [*1564]

Whether he would also be entitled to exoneration to the disappointment of *specific* legacies, is a question which, for some time, was doubtful (*e*). But it seems to be now settled, that the devisee would be entitled to compel the specific legatees to *contribute* to the payment of the debt, but not wholly to exonerate the land (*f*).

Residuary devise of real estate a specific devise.

*Before the Wills Act a residuary devise of real estate was treated as specific. It was at one time supposed that the effect of section 24 of that act, in making wills speak and take effect with reference to the real and personal estate comprised in them as if executed immediately before the death of the testator, was to alter this and to prevent a residuary devise of real estate being treated as specific (*g*), but it is now established that there is nothing in the act to alter the well-settled rule of law as to the effect of a residuary devise, namely, that for the purpose of payment of debts it is to rank *pari passu* with specific devises (*h*).

It must be further observed that the exoneration of the real estate out of the personal is confined to cases, where the claim in question is the *proper debt* of the deceased; for if it be not so, his heir or devisee must take the land *cum onere:* Thus if a settlor of real estate in contemplation of marriage covenants for payment of the portions

(*e*) See Cornewall *v.* Cornewall, 12 Sim. 298.

(*f*) Tombs *v.* Roch, 2 Coll. 490. Gervis *v.* Gervis, 14 Sim. 654. Hensman *v.* Fryer, L. R. 3 Ch. 420. But the terms of the will may show that as between the devisee and a specific legatee the testator intended that legatee to have priority. Thus in Re Saunders-Davies, 34 C. D. 482, a testator devised his real estate to the use of his wife during her life or widowhood, with remainder to the use of trustees for a term of five hundred years, on trust to raise by mortgage of the real estate or out of the rents and profits, portions of 5,000*l.* apiece for each of his younger children with remainder in strict settlement, the testator's eldest son taking the first life estate. The testator's general personal estate was insufficient for the payment of his debts and consequently the specifically bequeathed personal estate, and the real estate had to contribute, and it was held that as between the portioners and the persons entitled to the real estate on which they were charged, the former were not bound to contribute to make good the deficiency. The decision in this case seems on this point to be inconsistent with Long *v.* Short, 1 P. Wms. 403, but North, J., in his judgment points out, referring to the judgment of Lord Chancellor Brady in Jackson *v.* Hamilton, 9 Ir. Eq. 430, that the report of Long *v.* Short is inaccurate. See *post*, p.*1589, note (*o*).

(*g*) Dady *v.* Hartridge, 1 Dr. & Sm. 236. Barnwell *v.* Iremonger, *Ibid.* 242. Rotheram *v.* Rotheram, 26 Beav. 465. Bethell *v.* Green, 34 Beav. 302. Rodhouse *v.* Mold, 35 L. J. Ch. 67.

(*h*) Hensman *v.* Fryer, L. R. 3 Ch. 420. Lancefield *v.* Iggulden, L. R. 10 Ch. 136. Gibbins *v.* Eyden, L. R. 7 Eq. 371.

[*1565]

of children, or widow's jointure (*i*), or if a person makes a voluntary gift, *by way of charge, and covenants for the payment of the money (*k*), the land will be the primary fund for payment; for in these cases the charge is in its nature real and the covenant only an additional security. Accordingly in Graves *v.* Hicks (*l*), a father having agreed to secure a marriage portion for his daughter, mortgaged part of his estates for that purpose, and covenanted to pay the money: By his will he directed his debts to be paid, first out of the residue of his personal estate, then, out of his money in the funds, and lastly, out of his residuary real estates: And Sir L. Shadwell, V.-C., held, that the mortgaged estate was not to be exonerated from the portion out of the personal estate; his Honor being of opinion that, by the plain intention of the parties, the covenant of the father was meant to be auxiliary only to the charge upon his land; and that what he contracted to do, was to give security for the marriage portion (*m*).

Again, if a man buys an estate, subject to an existing mortgage, the land remains the proper fund for its discharge, and the heir or devisee of the purchaser cannot throw the debt on the personal estate, as the primary fund for payment (*n*). So if an estate descends on an heir-at-law (*o*), or is devised (*p*), charged with a mortgaged debt, and the heir or devisee dies, leaving the debt unpaid, the land will be the fund for its payment, and not the personal estate of the deceased heir or devisee (*q*): In other words, the principle *only extends to incumbrances created by the testator or ancestor himself

(*i*) Lanoy *v.* Athol, 2 Atk. 444. Edwards *v.* Freeman, 2 P. Wms. 438. Coventry *v.* Coventry, 2 P. Wms. 222. Loosemore *v.* Knapman, Kay, 123. But see Field *v.* Moore, 7 De G. M. & G. 691, where the provision was first secured by a covenant creating a debt to which the covenant for securing the charge was manifestly auxiliary.

(*k*) Wilson *v.* Darlington, 1 Cox, 172. *Ex parte* Digby, 1 Jac. 253.

(*l*) 6 Sim. 398.

(*m*) See also Ibbetson *v.* Ibbetson, 12 Sim. 206. Jenkinson *v.* Harcourt, Kay, 688.

(*n*) Coote, Mortg. 1016 *et seq.*, 5th edition.

(*o*) Noel *v.* Lord Henley, 7 Price, 241. S. C. in Dom. Proc. 12 Price, 213. Coote, Mortg. 1047, 5th edition. Re Leeming, 3 De G. F. & J. 43.

(*p*) Perkins *v.* Baynton, 2 P. Wms. 664, note to Evelyn *v.* Evelyn. Coote, Mortg. 1047, 5th edition.

(*q*) Scott *v.* Beecher, 5 Madd. 96. See also *Acc.* Lord Ilchester *v.* Lord Carnarvon, 1 Beav. 209. Lord Clarendon *v.* Barham, 1 Y. & C. Ch. C. 688. Re Taylor's Estate, 1 Exch. 384. Swainson *v.* Swainson, 6 De G. M. & G. 648. Hepworth *v.* Hill, 30 Beav. 484, *per* Romilly, M.R. But in Bond *v.* England, 2 K. & J. 44, James E. mortgaged real estate and *died intestate* in 1850, leaving his father, Edward E., his heir-at-law and sole next of kin: Edward E. also died

And even a direct and original mortgage made by the person to whom land has descended or been devised, will not operate to make his personal estate the primary fund for the discharge of the mortgage debt, if the money borrowed was for the purpose of paying off the debts (*r*) or legacies (*s*) of the ancestor or devisor; and the law will be the same, if a bond (*t*) or note of hand (*u*) is given by the heir or devisee for the payment of debts or legacies charged on the land. However, in the case of Barham *v.* Lord Thanet (*x*), a mortgage was made of the manor and lands of Silsden and other valuable estates, to secure a debt of 80,000*l.* and interest: The mortgagor died intestate, leaving the debt wholly unpaid; and his heir, being pressed to pay off 30,000*l.* part of the 80,000*l.*, procured a person to advance the sum required for the purpose, and the original mortgagee thereupon joined with the heir of the mortgagor in a deed conveying the manor and lands of Silsden to the person making the advance, subject to a proviso for redemption at the end of five years, being an equity of redemption, altogether different from the prior *equity of redemption, and the interest reserved being five per cent. instead of four and a half per cent., which was the rate reserved in the original mortgage: And it was held by Sir J. Leach, M.R., that it was in effect a new mortgage by the heir, and the 30,000*l.* was thereby constituted his personal debt. In Townsend *v.* Mostyn (*y*), the rule was laid down by Romilly, M.R., that where the owner of property adds mortgages of his own to other mortgages created by his ancestor and unites them together, and makes himself personally liable for the payment of the aggregate sum, the whole mortgage debt then becomes his debt.

It must here be observed, that although the debt is not originally

intestate, *and without ever having obtained letters of administration* to his son James: And it was held by Wood, V.-C., that the personal estate of James was liable, as between the heir and personal representative of Edward and James, to be applied in discharge of the mortgage debt.

(*r*) Tankerville *v.* Fawcett, 1 Cox, 237. Perkins *v.* Baynton, 2 P. Wms. 664 (note to Evelyn *v.* Evelyn), Coote, Mortg. 1049, 5th edition.

(*s*) Basset *v.* Percival, 1 Cox, 268. S. C. 2 P. Wms. 664, note. Coote, Mortg. 1049, 1050, 5th edition.

(*t*) Billinghurst *v.* Walker, 2 Bro. C. C. 604. Woods *v.* Huntingford, 3 Ves. 131, by Lord Alvanley. Coote, Mortg. 1050, 5th edition.

(*u*) Mattheson *v.* Hardwicke, 2 P. Wms. 665, note.

(*x*) 3 M. & K. 607. This case was followed by Romilly, M.R., in Bagot *v.* Bagot, 34 Beav. 134.

(*y*) 26 Beav. 76.

[*1568]

the debt of the party, yet it is optional in him, by sufficient testimony of intention, to render the debt *his own:* in which case his personal estate will, as between his real and personal representatives, become primarily liable to discharge the debt (*z*).

But it requires clear evidence of intention to make the debt his own: Thus a charge by will of debts, generally, on his real and *personal* estate, will not be sufficient of itself to shift the *onus* from land which came to him already mortgaged, whether by descent, or by devise, or by sale (*a*). So, in cases where the lands came to the deceased by descent or devise, his concurrence in the deed, and his personal covenant for payment of the money, on assignment or transfer of the mortgage, being only by way of additional security to the mortgagee, will not alter the burthen, as between his real and personal representatives (*b*). The same principle *applies, if other estates are added to the security on a further sum being lent (*c*), or if there be a covenant on his part for increasing the rate of interest (*d*). And it seems that if the sums borrowed by him, and added to the original mortgage, be comparatively small, equity will not consider that he had different intentions as to the different sums, but will charge the real estate with the whole (*e*). In case the deceased was a purchaser of the equity of redemption, the rule may, perhaps, be stated to be, that unless the mortgage money form part of the consideration money for the estate, or the purchaser, by communication with the mortgagee, clearly take the mortgage debt on himself, it

(*z*) See Bruce *v.* Morice, 2 De G. & Sm. 389.

(*a*) Lawson *v.* Hudson, 1 Bro. Chanc. Cas. 58. Ancaster *v.* Mayer, 1 Bro. Chanc. Cas. 454. Hamilton *v.* Worley, 2 Ves. 62. Butler *v.* Butler, 5 Ves. 534. Lord Ilchester *v.* Lord Carnarvon, 1 Beav. 290. See *infra.*

(*b*) Bagot *v.* Oughton, 1 P. Wms. 347. Evelyn *v.* Evelyn, 2 P. Wms. 664. Leman *v.* Newnham, 1 Ves. Sen. 52. Barham *v.* Lord Thanet, 3 M. & K. 607, 622. Lord Ilchester *v.* Lord Carnarvon, 1 Beav. 209. Hedges *v.* Hedges, 5 De G. & Sm. 330. So where there had been a mortgage of gavelkind lands, which, upon the death of the mortgagee intestate, descended to his two brothers as coparceners, and the elder brother, who was the common law heir of the mortgagor, purchased of the other brother his moiety of the gavelkind lands, and covenanted with him to pay the whole mortgage money; it was held that he did not thereby make the mortgage money his personal debt: Barham *v.* Lord Thanet, 3 M. & K. 607.

(*c*) Ancaster *v.* Mayer, 1 Bro. Chanc. Cas. 454, 464.

(*d*) Shafto *v.* Shafto, 1 Cox, 607, 2 P. Wms. 664, note.

(*e*) Lewis *v.* Nangle, Ambl. 150. S. C. 2 P. Wms. 664, note. Coote, Mortg. 1049, 5th edition. This latter doctrine must, it should seem, be received with much caution: *ibid.*

[*1569]

will be considered, as between his real and personal representatives, a charge on the land (*f*): And the mere covenanting with the mortgagor to pay the debt will not make it his personal debt (*g*): If, *however, the purchaser *borrows* a sum of money to enable him to complete his contract, and the estate is, on the purchase, limited to the lender either for a term of years, or in fee, by way of mortgage, the debt is the proper debt of the purchaser, and his personal estate will be primarily liable, even although part of the money borrowed be applied in discharge of an existing mortgage (*h*).

By stat. 17 & 18 Vict. c. 113, it is enacted that "when any person shall, after Dec. 31st, 1854, die seised of or entitled to any estate or interest in any land or other hereditaments which shall at the time of his death be charged with the payment of any sum

(*f*) 1 Sugd. V. & P. 310, 10th edit. Where, however, the deceased described himself, in his will, as having purchased a property, subject to a mortgage, but it appeared, on an examination of the history of the transaction, that he was the person who owed the money, although, as between himself and the mortgagee, he did not appear as the party who contracted the debt, Lord Cottenham held, that the personal estate was primarily liable: For that if a man borrows money in the name of a trustee, the debt is, in one way or other, his from the commencement, either to the person who advances the money, or to the trustee in whose name it is borrowed: Bickham *v.* Cruttwell, 3 My. & Cr. 763.

(*g*) 1 Sugd. V. & P. 310, 10th edit. "I entirely concur," said Sir John Leach, M.R., in Barham *v.* Lord Thanet, 3 M. & K. 624, "in the opinions expressed by Lord Alvanley and Sir William Grant, that the purchaser of an estate subject to a mortgage, who has no contract or communication with the mortgagee, and who merely covenants with the vendor to pay the mortgage debt, does not thereby make the mortgage-money his personal debt; and that his covenant is to be considered simply as an indemnity to the vendor, who has permitted the amount of the mortgage-money to be deducted from the price." A distinction has been made between the case of a man contracting to purchase a mere equity of redemption, and a contract for the purchase of an estate for a given sum, of which the mortgage debt forms part, and which, on the purchase, is discounted out of the consideration money; in which latter case it has been considered, the personal estate of the purchaser will be the primary fund: Parsons *v.* Freeman, 2 P. Wms. 664, note (1). Belvidere *v.* Rochfort, 5 Bro. P. C. 299. Toml. edit. But see Coote, Mortg. 1045, 1046, 5th edition. 2 Jarman on Wills, 4th edition, 641 *et seq.*

(*h*) Waring *v.* Ward, 5 Ves. 670. S. C. 7 Ves. 332. Coote, Mortg. 1045, 5th edition. See also Marquis of Bute *v.* Cunynghame, 2 Russ. Chanc. Cas. 275. So where A. B. purchased an estate in consideration of an annuity, which was thereupon charged on the purchase, and also upon another estate, and A. B. covenanted to pay it, his personal estate was held primarily liable for the payment: Yonge *v.* Furse, 20 Beav. 380.

[*1570]

or sums of money by way of mortgage, and such person shall not, by his Will or Deed, or other document, have signified any contrary or other intention (*i*), the *heir or devisee to whom such land or hereditaments shall descend or be devised shall not be entitled to have the mort*gage debt discharged or satisfied out of the personal estate or any other real estate of such person, but the land or here*ditaments so charged shall, as between the different per-

[Mr. Locke King's Act.] 17 & 18 Vict. c. 113: After Dec. 31, 1854, heir or devisee of real estate not to claim payment of mortgage out of personal assets.

(*i*) As to what amounts to a signification of a "contrary or other intention," there were, after the passing of the act, a series of cases in which it was held that directions by a testator that his debts should be paid out of his personal estate might be sufficient indication of intention on the part of the testator that land should not, under the act, be primarily liable to the payment of the mortgage debt. The following are some of such cases: Stone *v.* Parker, 1 Dr. & Sm. 212. Smith *v.* Smith, 3 Giff. 263. Eno *v.* Tatham, 4 Giff. 181. 32 L. J. Ch. 311. Moore *v.* Moore, 1 De G. J. & S. 603. Rodhouse *v.* Mold, 35 L. J. Ch. 67. These decisions led to the passing of 30 & 31 Vict. c. 69, expressly enacting that such direction shall not be a sufficient indication, and the cases are therefore of no importance except in the case of testators dying prior to or on Dec. 31st, 1867. Moreover, Locke King's Act Amendment Act, 1877, 40 & 41 Vict. c. 34, enacts that in the case of any testator or intestate dying after Dec. 31st, 1877, that such contrary intention shall not be deemed to be signified by a charge of, or a direction for payment of, debts upon or out of residuary real or personal estate or residuary real estate. Lord Romilly, in Brownson *v.* Lawrance, L. R. 6 Eq. 1, decided that the fact that one of two properties comprised in the same mortgage is specifically devised was sufficient to exclude the principal act, and make the estate which passed under the residuary devise *prima facie* liable to the whole of the mortgage debt; but this case cannot, it seems, now be regarded as good law, and Jessel, M.R., in Sackville *v.* Smyth, L. R. 17 Eq. 153, refused to follow it; and in a case where a testator dying after 30 & 31 Vict. c. 69, who was entitled to an estate subject to a mortgage, devised part of it to his widow for life, and the remainder to his residuary devisee, and bequeathed his personal estate subject to debts, and directed that the deficiency should be charged on his residuary real estate, he held that no contrary or other intention was shown within the meaning of Locke King's Act, so as to exonerate the widow's life interest from keeping down a proportionate part of the interest on the mortgage. And Malins, V.-C., in Gibbins *v.* Eyden, L. R. 7 Eq. 371, pointed out that Lord Romilly, in Brownson *v.* Lawrance, had probably overlooked the fact that Hensman *v.* Fryer, L. R. 3 Ch. 420, had decided that a residuary devise, notwithstanding the Wills Act, was specific. And North, J., in Re Smith, 33 C. D. 195, dissented from Brownson *v.* Lawrance, and followed Sackville *v.* Smyth and Gibbins *v.* Eyden. In the case of Re Newmarch, 9 C. D. 12, Jessel, M.R., after the passing of 30 & 31 Vict. c. 69, decided that a charge of debts on a part of a testator's real estate, *viz.*, his residuary real estate, in exoneration of the

[*1571] [*1572] [*1573]

sons claiming through or under the deceased person be primarily liable to the payment of all mortgage debts with which the same shall be charged, every part thereof, according to its value, bearing a proportionate part of the mortgage debts charged on the whole

rest, without specially referring to his mortgage debts, is not an expression of a contrary intention sufficient to exonerate the mortgaged estate; and that, as Locke King's Act applies to a mortgaged estate, different portions of which are devised to different persons, the devisees, in the absence of a sufficient expression of a contrary intention, must contribute according to the value of their respective portions. And where a testator by his will, dated in 1877, directed his executors "to pay all my just debts, funeral and testamentary expenses, out of my personal estate in exoneration of my real estate," it was held that a debt due from the testator at the time of his death on a mortgage of part of his real estate must be borne primarily by the mortgaged estate: Re Rossiter, 13 C. D. 355. It is to be observed that where real and personal estate are comprised in the same mortgage, there is nothing in Locke King's Act to make the real estate the primary fund to bear the whole mortgage debt: this must depend on the intention of the mortgagor: Trestrail *v.* Mason, 7 C. D. 655. Leonino *v.* Leonino, 10 C. D. 460. See also Marquis of Bute *v.* Cunynghame, 2 Russ. 275. Lipscomb *v.* Lipscomb, L. R. 7 Eq. 501. De Rochefort *v.* Dawes, L. R. 12 Eq. 540. The principal act was held to apply to equitable mortgages: Pembrooke *v.* Friend, 1 Johns. & H. 132. Coleby *v.* Coleby, 12 Jur. N. S. 496. But only where there was a defined and specified charge on a specified estate: Hepworth *v.* Hill, 30 Beav. 476. The act was also held to apply to copyholds: Piper *v.* Piper, 1 Johns. & H. 91; but not to leaseholds: Solomon *v.* Solomon, 33 L. J. Ch. 473. Re Wormsley's Estate, 4 C. D. 665. To remedy which the act of 1877 (40 & 41 Vict. c. 34) was passed, *post*, p. *1574, by which the statutes 17 & 18 Vict. c. 113, and 30 & 31 Vict. c. 69, as to any testator or intestate dying after Dec. 31st, 1877, were held to extend to any land or other hereditaments of whatever tenure which shall at the time of his death be charged with the payment of any sum or sums of money by way of mortgage, or any other equitable charge, including any lien for unpaid purchase-money. And it has been expressly decided in Re Kershaw, 37 C. D. 674, that the effect of this act is to include leaseholds within the principal act, and render them subject to a lien for unpaid purchase-money in exoneration of the general personal estate. It was held in Dacre *v.* Patrickson, 1 Dr. & Sm. 182, in a case where personalty went to the Crown, there being no next of kin, that the act applied, and the devisee of a mortgaged estate was not entitled to be exonerated out of the personalty notwithstanding the words of the statute "as between the different persons claiming through or under the deceased person." See further as to what is an "interest in land" within the meaning of the statute, Lewis *v.* Lewis, L. R. 13 Eq. 218, in which case Malins, V.-C., decided that land devised upon trusts for conversion, and taken in its converted state, is not an interest in land. It is to be observed, however, that his judgment is partly based on the words "heir or devisee" being inapplicable to such a subject-matter, and that now, by 40 & 41 Vict. c. 34, the words

thereof (*k*):† Provided always, that nothing herein contained shall affect or diminish any right of the mortgagee on such lands or hereditaments to obtain full payment or satisfaction of his mortgage debt either out of the personal estate of the person so dying as aforesaid, or otherwise: Provided also, that nothing herein contained shall affect the rights of any person claiming under or by virtue of any Will, Deed, or document already made, or to be made before Jan. 1, 1855" (*l*). And by stat. 30 & 31 Vict. c. 69, sect. 1 (*m*), it is enacted that "in the construction of the *Will of any person who may die after the 31st December, 1867, a general direction that the debts or that all the debts of the testator shall be paid out of his personal estate (*n*) shall not be deemed to be a declaration of an intention contrary to or other than the rule established

30 & 31 Vict. c. 69.

In construing wills general direction for payment of debts out of personalty not to include mortgage debts unless such intention expressly implied.

"devisee or legatee or heir" are substituted. Personal estate of a testator may *pro tanto* be converted into realty by a contract to purchase real estate, but if he dies without paying the purchase-money, leaving it equitably charged by way of lien on the land, no such conversion is effected, because by 40 & 41 Vict. c. 34, the devisee or heir is not entitled to have the purchase-money discharged or satisfied out of any other estate of the testator or intestate: Re Cockcroft, 24 C. D. 94. In the case of Hudson *v.* Cook, L. R. 13 Eq. 417, the purchaser had died intestate in 1869, and the case was not therefore affected by 40 & 41 Vict. c. 34, which did not apply the law as to vendor's lien to the case of an intestate dying before Dec. 31st, 1877.

(*k*) See Evans *v.* Wyatt, 31 Beav. 217. Trestrail *v.* Mason, 7 C. D. 655. Leonino *v.* Leonino, 10 C. D. 460.

† See American note at end of this section.

(*l*) The heir of an intestate, who before January 1, 1855, executed a mortgage reserving the equity of redemption to himself and his heirs, is not within this saving clause; for the heir claims by descent and not under any instrument: Piper *v.* Piper, 1 Johns. & H. 91. But a will executed before January 1, 1855, is a will "already made" within the meaning of the clause, notwithstanding the testator died after that day. Nor does a mere republication by codicil, giving no new operation to the material dispositions of the will, deprive it of that character: Rolfe *v.* Perry, 32 L. J. Ch. 471. This proviso only extends to a devisee; an heir-at-law taking by descent from an intestate is not within the proviso: Nelson *v.* Page, L. R. 7 Eq. 25.

(*m*) "The meaning of sect. 1, though not so happily expressed as it might be, appears to be this, that if a testator wishes to give a direction which shall be deemed a declaration of an intention, contrary to the rule laid down in Locke King's Act, it must be a direction applying to his mortgage debts in such terms as distinctly and unmistakably to refer to or describe them": *per* Giffard, V.-C., in Nelson *v.* Page, L. R. 7 Eq. 25.

(*n*) Although the act only refers to a direction to pay debts out of personal estate, and says that such a direction

by the said Act (*i.e.*, Locke King's Act, 1854), unless such contrary or other intention shall be further declared by words expressly or by necessary implication referring to all or some of the testator's debts or debt, charged by way of mortgage (*o*) on any part of his real estate." And by sect. 2 it is enacted that "in the construction of this Act or of the said Act (*i.e.*, Locke King's Act, 1854), the word 'mortgage' shall be deemed to extend to any lien for unpaid purchase-money upon any lands or hereditaments purchased by a testator."

And by Locke King's Act Amendment Act, 1877 (40 & 41 Vict. c. 34), it is enacted that the above-mentioned statutes shall "as to any testator or intestate dying after the 31st of December, 1877, be held to extend to a testator or intestate *dying seised or possessed of or entitled to any land or other hereditament of *whatever tenure*, which shall at the time of his death be charged (*p*) with the payment of any sum or sums of money by way of mortgage, or any other equitable charge including any lien for unpaid purchase-money (*q*): and the devisee or legatee or heir shall not be entitled to have such sum or sums discharged or satisfied out of any other estate of the testator or intestate unless (in the case of a testator) he shall, within the meaning of the said Acts [*i.e.*, Locke King's Act, 1854, and the Act of 1867 above set forth] have signified *a contrary intention:* and such contrary intention shall not be deemed to be signified by a charge of or direction for payment

40 & 41 Vict. c. 34.

shall not be deemed to be a declaration of an intention contrary to or other than the rule established by the act, yet Jessel, M.R., in Re Newmarch, 9 C. D. 12, 18, said: "It is impossible consistently with the Act to hold that a direction to pay them out of real estate, or out of a mixed estate of realty and personalty, does evince such a contrary intention." And this view seems to be embodied in the amending act, 40 & 41 Vict. c. 34. See also Elliott *v.* Dearsley, 16 C. D. 322.

(*o*) It is not necessary that the debt or debts should be referred to as mortgage debts: all that is required is that the debt should be specifically described and identified in some way. Therefore where a testator directed his private debts to be paid out of the proceeds of certain life policies, and bequeathed the residue of his personalty subject to the payment of his trade debts, and after the date of his will deposited the title deeds of real estate with his banker to secure an overdrawn trade account, it was held that the direction as to the payment of his trade debts amounted to a declaration of an intention contrary to or other than the rule established by the act: Re Fleck, 37 C. D. 677.

(*p*) Land, which has been delivered in execution under a writ of elegit to the judgment creditors of a testator, is charged within the meaning of this act: Re Anthony, [1892] 1 Ch. 450.

(*q*) See Re Cockcroft, 24 C. D. 94.

[*1575]

of debts upon or out of residuary real or personal estate or residuary real estate."

It frequently occurs that the deceased has devised his real estate for the payment of his debts, or of his debts and legacies, or has charged his real estate with their payment (*qq*). With respect to the exoneration of the real estate from legacies, the general rule is equally clear as it is with respect to debts, that the personal estate is the first and natural fund for the payment of them; and the real estate is only to be resorted to in aid of the personal. Therefore, even in cases where there is no doubt as to debts and legacies being effectually charged by the testator on the real estate, yet the personal estate remains undischarged from its primary liability to those claims (*r*).†

Exoneration of real estate charged with debts and legacies:

*Accordingly it has long been the settled rule of Courts of Equity, that the direction of the testator to sell or mortgage his real estate for the payment of his debts and legacies, is not alone evidence of the intention of the testator that the personal estate should be exempt from those charges, and amounts only to a declaration that the real estate shall be so applied to the extent in which the personal estate, which by law is the primary fund, shall be insufficient for those purposes (*s*).

Exoneration of personal estate:

Nevertheless, it is clear, that a testator may, if he pleases, give the personal estate, as against his heir or any other real representative, discharged from the payment of his debts and legacies (*t*):† And in such case the rules of exoneration in favor of the heir or the devisee, which

Testator may expressly exonerate personal estate.

(*qq*) As to what shall be sufficient to charge the real estate with debts and legacies, see 1 Rop. Leg. 571 *et seq.*, 3rd edit. 2 Pow. Dev. 644 *et seq.*, Jarman's edit. 2 Jarman on Wills, 4th edit. 582 *et seq.* See *ante*, p. *578.

(*r*) Davies *v.* Ashford, 15 Sim. 42. Roberts *v.* Roberts, 13 Sim. 336. The rule that a charge of debts on real estate does not of itself exonerate the personal estate, applies to a case where a charge for payment of debts is created by deed: French *v.* Chichester, 2 Vern. 568. But no such rule applies to specific personal estate similarly charged, and therefore the charged personal estate must be applied in the first instance to the payment of the debts of the deceased chargor, to the exoneration of his general personal estate in the hands of his personal representative: Trott *v.* Buchanan, 28 C. D. 446.

† See American note at end of this section.

(*s*) Rhodes *v.* Rudge, 1 Sim. 84, 85. Walker *v.* Hardwicke, 1 M. & K. 396. Forrest *v.* Prescott, L. R. 10 Eq. 545. See also Re Ovey, 31 C. D. 113. Heron *v.* Poole, 42 L. J. Ch. 348.

(*t*) Ancaster *v.* Mayer, 1 Bro. Chanc.

have hitherto been the subject of this chapter, altogether fail of application.

What expression by testator sufficient to exonerate personal estate.

A most important question, therefore arises, *viz.*, what is *the mode of expression, on the part of the testator, which will give the personal estate exempt from such payment, in contravention of the ordinary rule that such estate is first liable.

In the earlier cases, it was laid down, that express words of exemption were necessary (*u*): But this rule has been relaxed by subsequent decisions: and it is now settled that the personal fund will be exempted, if the intention of the testator in its favor can be collected from a sound interpretation put upon the whole will; in other words, if there appears from the whole testamentary disposition taken together, an intention on the part of the testator so expressed, as to convince a *judicial* mind, that it was meant, not merely to charge the real estate, but so to charge it as to exempt the personal (*x*).

It is obvious, therefore, that it is impossible to lay down any general rule as a guide upon this question; since the construction of every will, in which the point arises, must depend merely upon the individual circumstances of the particular case: and in these, as in all other cases of inference or implication, except necessary or logical implication, there may be a difference of opinion between the most eminent judges who are called on to consider the circumstances. The difficulty with which the whole subject is surrounded is demonstrated by the following observations of Lord Eldon, in Bootle *v.*

Cas. 462. In Dacre *v.* Patrickson, 1 Dr. & Sm. 182, Kindersley, V.-C., says: "It is a general rule, in the absence of any expression of intention to the contrary, that if a testator charges real estate with payment of debts in exoneration of his personal estate, and bequeaths the personal estate to particular individuals, he is held to have intended to exonerate his personal estate for the benefit only of those legatees, and therefore if the bequest of the personal estate fails, whether by the death of the legatees in the lifetime of the testator or by reason of the *Statute of Mortmain*, so that the personal estate goes to other persons than those intended by the testator, those persons are not entitled to the benefit of the exoneration." And Fry, L.J., in his judgment in Kilford *v.* Blaney, 31 C. D. 56, 66, expresses the same view, that where the gift to the person intended to be benefited by the exoneration fails, the exoneration itself fails, and that this principle applies *whether the property dealt with be realty or personalty.* See also Fisher *v.* Fisher, 2 Keen, 610.

[*1577]

(*u*) Fereyes *v.* Robertson, Bunb. 302. Dolman *v.* Smith, Prec. Chanc. 458.

(*x*) By Lord Eldon, in Bootle *v.* Blundell, 1 Meriv. 230. Dawes *v.* Scott, 5 Russ. 32.

Blundell (*y*): "On a comparison of all the cases which have arisen, it is scarcely possible to find any two in which the Court altogether agrees with itself; there being scarcely a single circumstance that is considered in one case as a ground of inference in favor of the intention, but it is considered in other cases as against the same inference; and I can find no rule deducible from all that has been said on the subject, but this (which appears to be a rule supported by *all the cases taken together), namely, that since it has been laid down that express words are not necessary to exempt the personal estate, there must be in the Will that which is sometimes denominated 'evident demonstration,' sometimes 'plain intention,' and 'necessary implication,' to operate that exemption" (*z*).

In some of the earlier cases, evidence *dehors* the will was received, to show the testator's intention: But on this point, Lord Eldon expressed his clear opinion, in Bootle *v.* Blundell (*a*), that with regard to circumstances *dehors* the will, which have been sometimes called in to assist in explaining it, such as the respective amount of the real and personal estate, the greater or less degree of personal favor which the testator may be presumed to have entertained toward this or that object of his bounty, and others of that nature, they ought all to be set aside in the consideration of a question depending on a will, such question being fit to be decided only by an examination of the whole will taken together (*b*).

The principle which has the greatest influence on the determination of this question, and which has been uniformly supported by all the cases is, that it is not enough for the testator to have charged his real estate with, or in any manner devoted it to, the payment of his debts and legacies: The rule of construction is such as aims at finding, not that the real estate is charged, but that the personal estate is discharged (*c*). In other words, it is not by an intention to charge the real, but by a plain intention to discharge the personal estate, that the question is to be decided (*d*).

(*y*) 1 Meriv. 219.

(*z*) See the observations made on this passage by Knight-Bruce, V.-C., in Collis *v.* Robins, 1 De Gex & Sm. 141, and by Lord Halsbury, L. C., in Kilford *v.* Blaney, 31 C. D. 56, 61.

(*a*) 1 Meriv. 216.

(*b*) See also Inchiquin *v.* French, 1 Cox, 9. Stephenson *v.* Heathcote, 1 Eden, 39. Andrews *v.* Emmot, 2 Bro. Ch. C. 297. Standen *v.* Standen, 2 Ves. 589. Coote *v.* Coote, 3 J. & Lat. 175.

(*c*) Bootle *v.* Blundell, 1 Meriv. 220.

(*d*) *Ibid.*: 230. Bickham *v.* Cruttwell, 3 My. & Cr. 763. Collis *v.* Robins, 1 De G. & Sm. 131, 141. Trott *v.* Buchanan, 28 C. D. 446, 453.

Cases where no sufficient expression by testator of intention to exonerate personal estate.

*Thus it has been held, that a mere bequest of residuary personal estate by the term "residue" (*e*), or "*all* my personal estate" (*f*), or a like bequest, after previous sums or articles given out of it (*g*), or as of personal property "not otherwise disposed of" (*h*), is not singly sufficient to exempt the personal fund from its natural primary obligation to pay debts and legacies, although the real estate be also subjected to their payment by the will. Again, charging the real estate ever so anxiously for the discharge of debts, will not of itself exempt the personal (*i*): And whether the whole real estate be charged with debts and legacies (*k*), or a sufficient part of it (*l*), or a specific part of it (*m*), or it be given in trust to pay debts and legacies by sale of it (*n*), or a term of years be created out of it for those purposes (*o*), still the personal estate must be *first* applied. Again, neither a devise for payment of debts and legacies out of the rents of real estates (*p*), nor a devise on condition of the devisee paying the debts (*q*), nor a mere charge of funeral and testamentary expenses, as well as debts, on the land (*r*), nor *an express charge of only *some* of the debts upon the *personalty* (*s*), will exempt the personal fund from its legal primary liability (*t*).

A very strong inference against the claim of exemption of the personal estate, appears to be the circumstance of its falling to the executor for his benefit *virtute officii* (*u*), prior to the statute 1 Wm.

(*e*) Samwell *v.* Wake, 1 Bro. Chanc. Cas. 144. Tait *v.* Lord Northwick, 4 Ves. 824.

(*f*) Harewood *v.* Child, cited Cas. temp. Talb. 204. Haslewood *v.* Pope, 3 P. Wms. 324. Brummel *v.* Prothero, 3 Ves. 111. Aldridge *v.* Wallscourt, 1 Ball. & Beat. 312: but see *post*, *1581.

(*g*) Brydges *v.* Phillips, 6 Ves. 567.

(*h*) Hartley *v.* Hurle, 5 Ves. 540.

(*i*) By Lord Loughborough, in Tait *v.* Lord Northwick, 4 Ves. 824.

(*k*) Doiman *v.* Smith, Prec. Chanc. 456.

(*l*) Inchiquin *v.* French, Ambl. 33, 37. S. C. 1 Cox, 1. Rhodes *v.* Rudge, 1 Sim. 79.

(*m*) White *v.* White, 2 Vern. 43. Bridgman *v.* Dove, 3 Atk. 201. Fitzgerald *v.* Field, 1 Russ. Chanc. Cas. 428.

(*n*) Inchiquin *v.* French, 1 Cox, 1. Hancox *v.* Abbey, 11 Ves. 186.

(*o*) Tower *v.* Rous, 18 Ves. 132.

(*p*) Hartley *v.* Hurle, 5 Ves. 540.

(*q*) Bridgman *v.* Dove, 3 Atk. 201.

(*r*) Walker *v.* Jackson, 2 Atk. 626. Stephenson *v.* Heathcote, 1 Eden, 38. Brydges *v.* Phillips, 6 Ves. 570. See also Gray *v.* Minnethorpe, 3 Ves. 103. Hartley *v.* Hurle, 5 Ves. 540. M'Cleland *v.* Shaw, 2 Scho. & Lef. 538. Bootle *v.* Blundell, 1 Meriv. 228, 229: but see *post*, pp. *1580, *1581.

(*s*) Watson *v.* Brickwood, 9 Ves. 447.

(*t*) 1 Rop. Leg. 609, 3rd edit.

(*u*) Gray *v.* Minnethorpe, 3 Ves. 106. Coote, Mortg. 1028, 5th edit.

IV. c. 40 (*x*), or in an instance of the gift of the personal estate to the executor as a legacy, and the appointment of him to be executor, being in one and the same sentence (*y*): but the converse of the proposition above stated, *i.e.*, the gift of the legacy, and the appointment of the legatee to be executor, being in distinct sentences, will not of itself afford an inference for the exemption of the personal estate. Cases are, however, to be found, in which the executor has been held to take the personal estate, or residue of a personal estate, as a specific legacy, exempt from the payment of debts (*z*).

Again, the circumstance of the *same persons* being appointed trustees and executors, has had considerable weight in inducing judges to draw an inference, that the personal estate is not to be exempted (*a*): and Lord Alvanley has remarked (*b*), that the circumstance of the trustees not being the executors, affords a strong inference as to the real intention, and is always favorable to the exemption of the personal estate (*c*).

It has been already stated, that a *mere charge* of funeral expenses upon the real estate will not exempt the personal fund from its primary liability to debts, &c. However, such *a charge, in concurrence *with other circumstances*, has, in some cases, had importance attached to it, in exempting the personal estate from debts, &c., upon the reasoning, that, as funeral expenses primarily attach themselves to the personal fund in the hands of executors, the testator, by transferring that duty from them to the trustees of the real estate, must have intended to give the whole of the personalty to the legatee, specifically discharged from every obligation to which it was naturally liable (*d*). On the other hand, in some instances, the omission to charge funeral expenses on the real estate has been considered a circumstance of some weight, to show that the personal estate is not to be exempt, because it shows that the testator intends the personal estate to be charged beyond the particular legacies or charges mentioned in the will, and being once broken in upon, the argument of its being specific is destroyed (*e*).

(*x*) See *ante*, p. *1343.

(*y*) Bromhall *v.* Wilbraham, Cas. temp. Talb. 274. Rhodes *v.* Rudge, 1 Sim. 79. Coote, Mortg. 1028, 5th edit.

(*z*) Hall *v.* Brooker, Gilb. Eq. Rep. 73. Coote, Mortg. 1029, 5th edit.

(*a*) Dolman *v.* Smith, Prec. Chanc. 456. Coote, Mortg. 1027, 5th edit.

(*b*) Burton *v.* Knowlton, 3 Ves. 108.

(*c*) Coote, Mortg. 1027, 5th edit.

(*d*) Burton *v.* Knowlton, 3 Ves. 108. See also Greene *v.* Greene, 4 Madd. 157. Michell *v.* Michell, 5 Madd. 69.

(*e*) Brydges *v.* Phillips, 6 Ves. 570. Coote, Mortg. 1028, 5th edit.

Again there has been occasion to state that the personalty is not exempted by the facts of the debts, &c., being charged upon the real estate, and a mere concomitant bequest of *all* the personal estate (*f*). However, in several instances, the circumstance of such a bequest, as distinguished from a gift of the *residue*, has been treated as having weight (*g*).

The limits of this treatise will not allow that the different instances, in which the intention of the testator in favor of the exemption of the personal estate has been established, should be stated at large. The principal decisions of that nature will be found collected in the note below (*h*), and the *attention of the reader is particularly directed to the case of Bootle *v.* Blundell (*i*), in which almost every circumstance occurred which had been the subject of judicial observations in preceding cases, and upon which different judges had formed different opinions as to their effect singly to exonerate the personal estate: and Lord Eldon, after going through a

(*f*) *Ante*, p. *1579.

(*g*) Tower *v.* Rous, 18 Ves. 139. Bootle *v.* Blundell, 1 Meriv. 228. Greene *v.* Greene, 4 Madd. 148. Michell *v.* Michell, 5 Madd. 69. Gilbertson *v.* Gilbertson, 34 Beav. 354. Trott *v.* Buchanan, 28 C. D. 446.

(*h*) Waise *v.* Whitfield, 8 Vin. Abr. 437, tit. Devise, (Z. d.) pl. 19. Adams *v.* Meyrick, 1 Eq. Cas. Abr. 271, pl. 13. March *v.* Fowke, Finch, Rep. 414. Wainwright *v.* Bendlowes, 2 Vern. 718. S. C. Prec. Chanc. 451. Anderton *v.* Cooke, cited 1 Bro. Ch. Cas. 457. Bamfield *v.* Wyndham, Prec. Chanc. 101. Bicknel *v.* Page, 2 Atk. 79. Kynaston *v.* Kynaston, 1 Bro. Ch. Cas. 457, *in notis*. Holliday *v.* Bowman, cited 1 Bro. Ch. Cas. 145. Gaskill *v.* Hough, cited 31 Ves. 110. Atty.-Gen. *v.* Barkham, cited Cas. temp. Talb. 206. Stapleton *v.* Colvile, Cas. temp. Talb. 202. Phipps *v.* Annesley, 2 Atk. 57. Bicknel *v.* Page, 2 Atk. 79. Walker *v.* Jackson, 2 Atk. 624. S. C. 1 Wils. 24. Williams *v.* Bishop of Llandaff, 1 Cox, 254. Webb *v.* Jones, 1 Cox, 245. S. C. 2 Bro. Ch. Cas. 60. Burton *v.* Knowlton, 3 Ves. 107. Hancox *v.* Abbey, 11 Ves. 179. Bootle *v.* Blundell, 1 Meriv. 193. Gittins *v.* Steele, 4 Swanst. 24. Greene *v.* Greene, 4 Madd. 148. Michell *v.* Michell, 5 Madd. 69. Noel *v.* Noel, 12 Price, 213. Welby *v.* Rockcliffe, 1 Russ. & M. 571. Driver *v.* Ferrand, *ibid.* 681. Clutterbuck *v.* Clutterbuck, 1 M. & K. 15. Blount *v.* Hipkins, 7 Sim. 43. Vandeleur *v.* Vandeleur, 9 Bligh. 157. Jones *v.* Bruce, 11 Sim. 221. And see the cases stated 1 Rop. Leg. 610 *et seq.* 3rd edit. 2 Pow. Dev. 681 *et seq.* Jarman's edit. Coote, Mortg. 1025 *et seq.* 5th edit. 2 Jarm. Wills, 4th edit. 652 *et seq.* Ashby *v.* Ashby, 1 Coll. 549. Bateman *v.* Roden, 1 J. & Lat. 356. Lamphier *v.* Despard, 2 Dr. & Warr. 59. Coote *v.* Coote, 3 J. & Lat. 175. Collis *v.* Robins, 1 De G. & Sm. 131. Ouseley *v.* Anstruther, 10 Beav. 453. Lomax *v.* Lomax, 12 Beav. 285. Quennell *v.* Turner, 13 Beav. 240. Woodhead *v.* Turner, 4 De G. & Sm. 429. Evans *v.* Evans, 17 Sim. 102. Whieldon *v.* Spode, 15 Beav. 537. Plenty *v.* West, 16 Beav. 173. Forrest *v.* Prescott, L. R. 10 Eq. 545.

(*i*) 1 Meriv. 193.

[*1582]

review of those cases, and making full observations upon every part of the will, determined that the personal estate was exonerated from the primary liability to pay debts.

Legacies given out of a particular fund:

It is necessary, before leaving this subject, to advert to a distinction which exists with respect to it, between debts and legacies. It has already appeared, that a pecuniary legacy, given generally, without specification of a particular fund for its payment, is primarily chargeable upon the personal estate, although in other parts of the will, the real estate is made expressly liable to it; the rule of law considering the personal estate as the natural fund to bear such a charge (*k*): But if the pecuniary legacy be not given generally, but given only out of a particular fund, there the legatee can have recourse only to the particular fund (*l*): and in this, there is an essential difference between debts and legacies (*m*).

exoneration of the general personal estate.

Further, it may be stated as a rule that where a testator gives a certain portion of his personal estate and expressly directs that it shall be liable and applicable to the payment of his debts, it is an exoneration of the general personal estate (*n*).

Mixed fund of real and personal estate in one mass directed to be applied to payment of debts and legacies:

Where the testator directs a sale of his real estate, and the proceeds and the personal estate are thrown into one mass, which he subjects to the payment of debts and legacies, the real and the personal estate must contribute, in proportion to their relative amounts, to the payment of the debts and legacies (*o*): But this rule is not

(*k*) *Ante*, p. *1575, *1578.

(*l*) Kirke *v.* Kirke, 4 Russ. Chanc. Cas. 435, 449. See Spurway *v.* Glynn, 9 Ves. 483. Hancox *v.* Abbey, 11 Ves. 179. Gittins *v.* Steele, 1 Swanst. 24. Rickets *v.* Ladley, 3 Russ. Chanc. Cas. 418. Roberts *v.* Roberts, 13 Sim. 336. Dickin *v.* Edwards, 4 Hare, 273, 276. Fream *v.* Dowling, 20 Beav. 624. Ion *v.* Ashton, 28 Beav. 379. Sinnett *v.* Herbert, L. R. 12 Eq. 201. But see also Mann *v.* Copeland, and the other cases cited, *ante*, p. *1032. See further Colvile *v.* Middleton, 3 Beav. 570.

(*m*) Kirke *v.* Kirke, 4 Russ. Chanc. Cas. 449. See Noel *v.* Lord Henley, 7 Price 241. S. C. in Dom. Proc. 12 Price, 213, *nomine* Noel *v.* Noel.

(*n*) Webb *v.* De Beauvoisin, 31 Beav. 576. Vernon *v.* Manvers, 31 Beav. 623. Coventry *v.* Coventry, 2 Dr. & Sm. 470. Trott *v.* Buchanan, 28 C. D. 446.

(*o*) Roberts *v.* Walker, 1 Russ. & M. 572. Dunk *v.* Fenner, 2 Russ. & M. 557. Fourdrin *v.* Gowdey, 3 M. & K. 383. Stocker *v.* Harbin, 3 Beav. 479. Salt *v.* Chattaway, 3 Beav. 576. West *v.* Cole, 4 Y. & Coll. 460. Young *v.* Hassard, 1 Jones & Lat. 466. Barry *v.* Harding, *ibid.* 475. Atty.-Gen. *v.* Southgate, 12 Sim. 77. Shallcross *v.* Wright, 12 Beav. 505. Robinson *v.* Governors of London Hospital, 10 Hare, 19. See

applicable where the real *and personal estate are not thrown into one mass, notwithstanding they are both given to the same persons, in trust therewith to pay debts and legacies; for in such case each fund retains its original character and its original liabilities (*p*). In order that the rule should apply there must be a direction for the sale of the real estate (*q*).

specific bequests not affected by a general charge of legacies on real and personal estate.

It may here be mentioned that where there is a specific devise or a specific legacy, the presumption is that the testator intended that the devisee or legatee should have it in its integrity: Therefore a general charge of particular legacies on the whole real and personal estate will not be allowed to operate as a charge in derogation of such specific devises or legacies (*r*).

"All my just debts," meaning of.

The expression in a will "all my just debts" includes all the testator's debts whenever and wherever contracted, and therefore includes a debt contracted by him after the making of the will, and contracted in a country other than that of his domicil, and secured upon property in that country (*s*).

also Falkner *v.* Grace, 9 Hare, 282. Lord *v.* Wightwick, 1 Drewr. 576. Tatlock *v.* Jenkins, Kay, 654. Bentley *v.* Oldfield, 19 Beav. 225, 228. Simmons *v.* Rose, 21 Beav. 37. 6 De G. M. & G. 411. Allan *v.* Gott, L. R. 7 Ch. 439. The fact, however, that a mixed fund of personalty and proceeds of sale of realty is created will not exonerate the personalty from its primary liability in the absence of a direction to pay the debts and legacies out of the mixed fund. Elliott *v.* Dearsley, 16 C. D. 322.

(*p*) Boughton *v.* Boughton, 1 H. L. C. 406. Blann *v.* Bell, 5 De G. & Sm. 658. Tidd *v.* Lister, 3 De G. M. & G. 857. Tench *v.* Cheese, 6 De G. M. & G. 453.

(*q*) But in Allan *v.* Gott, L. R. 7 Ch. 439, it was held by L.JJ. James and Mellish that in order to bring the case within the rule of Roberts *v.* Walker, 1 Russ. & M. 572, *ante*, note (*o*), it is not necessary that the testator should have directed an absolute conversion of the real estate; it is sufficient that he has shown an intention of creating a mixed fund of realty and personalty out of which the legacies are to be paid.

(*r*) Spong *v.* Spong, 1 Dow. & C. 365. *Ante*, p. *1033, note (*h*). Conron *v.* Conron, 7 H. L. C. 168. See also Mannox *v.* Greener, L. R. 14 Eq. 456.

(*s*) Maxwell *v.* Maxwell, L. R. 4 H. L. 506.

---

† *Probate sale—American statutes.* In nearly all of the United States provision is made by statute for sale of the lands of a decedent, when his personal property is insufficient for the payment of his debts, by order of the Probate Court, and on the application of the personal representative. This is so, in *Alabama* (1886 Code, §§ 2103–04), *Arkansas* (1884 Dig. Stats. § 171), *California* (Code C. P. §§ 1536, 1639), *Colorado* (1891 An. Stats. § 4750), *Connecticut* (1888 G. S. § 600), *Delaware* (1893 R. C. c. 90, § 1), *Florida* (1892 R.

[*1584]

S. § 1921), *Georgia* (1882 Code, § 2559), *Illinois* (1891 R. S. c. 3, § 97), *Indiana* (1894 Rev. §§ 2485, 2486), *Iowa* (1888 R. C. § 2387), *Kansas* (1889 G. S. § 2898), *Maine* (1883 R. S. c. 71, § 1), *Maryland* (1888 P. G. L. Art. 93, § 284), *Massachusetts* (1882 P. S. c. 134, § 1), *Michigan* (1882 An. Stats. § 5874), *Minnesota* (1891 Stats. § 5783), *Missouri* (1889 R. S. § 145), *Nebraska* (1893 C. S. c. 23, § 67), *Nevada* (1885 G. S. §§ 2784, 2823), *New Hampshire* (1891 P. S. c. 194, § 1, c. 189, § 15), *New Jersey* (1877 Rev. 766, § 70), *New York* (CodeC. P. § 1436), *North Carolina* (1883 Code, § 1436), *Ohio* (1890 R. S. § 6136), *Oregon* (1892 An. L. § 1145), *Pennsylvania* (1883 Purd. Dig. 531, § 120), *Rhode Island* (1882 P. S. c. 187, § 6), *South Carolina* (1882 G. S. § 1931), *Tennessee* (1884 Code, § 3105), *Texas* (1888 R. S. Art. 2068), *Vermont* (1880 R. L. §§ 2166, 2182), *Wisconsin* (1889 An. Stats. § 3874). So, on application of a creditor, in Arkansas, Indiana, and New York.

These statutes generally apply to the payment of debts and administration expenses; also to the payment of legacies, in Colorado, Maine, Massachusetts, Minnesota, Missouri, Kansas, Nebraska, Indiana, Vermont, and Wisconsin; to partition, in *Alabama* (Code, § 2256) and *Pennsylvania* (1834 P. L. 81); Rawle's Appeal, 119 Pa. St. 100; Taylor's Appeal, Id. 297; and to purposes of distribution, in Georgia (the order for sale being confined to the same purpose set forth in the petition, Shipp *v.* Gibbs, 14 S. E. Rep. 196); and to the payment of the statutory allowance for the support of the family, in California and Alabama. They provide for an order to mortgage the lands, in Colorado, Indiana, Minnesota, Pennsylvania, and Wisconsin, and if for the benefit of the estate, in Massachusetts, or for the purpose of paying off prior mortgages, in Nebraska; and to lease them, in Alabama, Arkansas, Colorado, North Carolina, Texas, and Wisconsin; for not more than two years, in Missouri; or five years, in Indiana; or for the term of the administration, in Minnesota, Smith *v.* Park, 31 Minn. 70; G. S. c. 52, § 6; and California, Doolan *v.* McCauley, 66 Cal. 476; or to mortgage or lease them for a term of years not beyond the majority of the heirs entitled, in *Illinois* (1891 R. S. c. 3, § 119), *New York* (Code C. P. § 2760).

In general, they do not disturb the liability of the personal property as the primary fund. The order of sale and liability of the real and personal property is left, however, to be determined by the order of the court as may seem most for the interest of the estate, in Alabama, California, Connecticut, Florida, and Missouri.

The particular procedure under these statutes will be found treated with great detail and thoroughness as to New York in Redf. Surr. Pr. p. 663 *et seq.*, and as to Massachusetts in Croswell on Exrs. § 453 *et seq.*

If the statute is repealed after the order of sale, but before sale, it terminates the authority of the administrator to sell. Bank of Hamilton *v.* Dudley, 2 Pet. 492.

Jurisdiction of court. As a general rule, the Probate Court has exclusive jurisdiction. McPike *v.* Wells, 54 Wis. 136; Miskimins' Appeal, 114 Pa. St. 530; Priest *v.* Spier, 96 Mo. 111. In some states it exercises jurisdiction concurrently with the Circuit Court, Hays *v.* McNealy, 16 Fla. 409; or the Court of Common Pleas. Jones *v.* Levi, 72 Ind. 586. In some the jurisdiction is exclusive in the surrogate who issued letters, Long *v.* Olmsted, 3 Dem. 581; Stack *v.* Royce, 34 Neb. 833; or in the Probate Court of decedent's domicil, Spencer *v.* Jennings, 123 Pa. St. 184; S. C. 114 Id. 618; or in the county where administration was granted, and not where the land

lies, Apel *v.* Kelsey, 47 Ark. 418; or in either place. Reynolds *v.* Schmidt, 20 Wis. 374.

The statutes have been held to apply to an administration already pending at the time of the passage of the act. Buel's Appeal, 60 Conn. 63. And the jurisdiction of the Probate Court ceases while the administration is suspended (*e. g.*, by the removal of the administrator). Bender *v.* Bean, 52 Ark. 132. In the absence of any general statutory or particular testamentary authority an executor or administrator cannot be authorized by a special act of the legislature without the consent of the heirs to sell lands of the decedent for the payment of his debts. Hegarty's Appeal, 75 Pa. St. 503. So, a special act authorizing a sale for any purpose (promotion of interests of the estate) not recognized by the general statute. Brenham *v.* Story, 39 Cal. 139.

Time for application and sale. Unless the time is otherwise fixed by the statute, application for sale may be made soon after the death of the decedent, and whenever the necessity for it is apparent. Underwood *v.* Underwood, 22 W. Va. 303; Estate of Winpenny, 16 Phila. 207. In New York, until recently the creditors could not take proceedings until after the representative's account was rendered, reckoning their limitation after such time. Mead *v.* Jenkins, 95 N. Y. 31; S. C. 4 Redf. 369.

In some states a time within which application must be made is fixed by statute, *e. g.*, one year in New Jersey, three years in New York, and formerly in Minnesota, and five years in Pennsylvania. If the statutory time runs (as in New York) from the granting of letters, it will relate to the original letters granted, and not to supplementary letters *de bonis non*, Slocum *v.* English, 62 N. Y. 494; although the time elapsing between the removal of an executor and the appointment of his predecessor has been held not to be part of the time reckoned, Smith *v.* Brown, 99 N. C. 377; or between the statutory disqualification of an administratrix by marriage and the appointment of her successor. Pratt *v.* Houghtaling, 45 Mich. 457. The statutory limit relates to the commencement of proceedings, Estate of Haigh, 14 Civ. Pro. 357; Dodge *v.* Stevens, 107 N. Y. 585; or to the issue of the citation, and not to its return, Matter of Topping, 2 Connoly 187; to the application to the court, and not to the order for sale. Liddel *v.* McVickar, 6 Halst. 44; nor the sale itself. Mayer *v.* McCune, 59 How. Pr. 78; Larzelere *v.* Starkweather, 38 Mich. 96; Edmunds *v.* Rockwell, 125 Mass. 363. But in New York, it is not enough for the petition to be filed within the time, if the citation is issued after it expires. Estate of Topping, 18 Civ. Pro. 115. In *West Virginia* (1891 Code, c. 86, § 7), after six months from testator's death a creditor's suit then pending takes precedence of a suit brought by the executor to subject the land to the payment of debts.

In the absence of any statute restricting the time application may be made and sale ordered within any reasonable time. Estate of Montgomery, 60 Cal. 645. It has been suggested that a good rule for determining such reasonable time is the time fixed by statute for presentment of claims, Woerner on Admn. § 465; and so held, in Iowa and New Hampshire, McCrary *v.* Tasker, 41 Ia. 255; Hadley *v.* Gregory, 57 Ia. 157; Hall *v.* Woodman, 49 N. H. 295; or the time allowed for settlement of the estate, Kent, C., in Mooers *v.* White, 6 Johns. Ch. 360; and so held, in Michigan and Minnesota, Hoffman *v.* Beard, 32 Mich. 218; Larze-

lere *v.* Starkweather, 38 Mich. 96; State *v.* Probate Court, 46. Minn. 296; or the time allowed by the general Statute of Limitations, Story, J., in Ricard *v.* Williams, 7 Wheat. 59; *e. g.*, seven years, in Illinois, Wolf *v.* Ogden, 66 Ill. 224; Furlong *v.* Riley, 103 Ill. 628; Reed *v.* Colby, 89 Ill. 104; ten years, in Arkansas, Brown *v.* Hanauer, 48 Ark. 277; Mays *v.* Rogers, 37 Ark. 155; Roth *v.* Holland, 56 Ark. 633; fifteen years, in Indiana, Cole *v.* Lafontaine, 84 Ind. 446; Scherer *v.* Ingerman, 110 Ind. 428.

Reasonable Time—Laches. The court may refuse to order a sale because of long delay in applying for the order, such as a delay of twelve years, Gunby *v.* Brown, 86 Mo. 253; or seven years, Hatch *v.* Kelly, 63 N. H. 29; or seventeen years, Estate of Crosby, 55 Cal. 574; or four years after foreign allowance of the claim, Croswell *v.* Slack, 68 Ia. 110; although there is no statutory limit of time. State *v.* Probate Court, 40 Minn. 296. After such delay the applicant must show some excuse to entitle him to the order. Wilson *v.* Stanton, 58 Ia. 404. And if the order is granted without excuse shown after a long delay, the sale may be enjoined by a court of equity, Gunby *v.* Brown, 86 Mo. 253; although, in general, a court of equity will not enjoin a sale for any cause which might have been set up by way of objection in the Probate Court. Bailey *v.* Ross, 68 Ga. 735. The sale is not necessarily void upon collateral objection made in an action of ejectment. Pratt *v.* Houghtaling, 45 Mich. 457; Stanley *v.* Noble, 59 Ia. 666. If, however, an administrator neglects to apply for a sale of the land to pay a debt due to himself for such time as would render him chargeable to other creditors, it will be *prima facie* evidence that his debt has been extinguished. Miller *v.* Irby, 63 Ala. 477.

Excuses for delay. On the other hand, a sale may be ordered after a long delay, if it is sufficiently excused. Bursen *v.* Goodspeed, 60 Ill. 277; *e. g.*, by the continuance of the widow's life estate, Killough *v.* Hinton, 54 Ark. 65; or by the litigation of the title of the deceased to the land, Estate of Argüello, 85 Cal. 151; or of the claims against the estate, Moore *v.* Ellsworth, 51 Ill. 308; Scharb *v.* Holderbaum, 80 Ia. 394; or by the failure of the administrator to give the statutory notice of his appointment, Hudson *v.* Hulbert, 15 Pick. 425; or by the nonresidence of the deceased debtor, and the negligence of his executors to probate his will, Lawrence's Appeal, 49 Conn. 411; or by the unmarketability of the land during the time of the delay. Conger *v.* Cook, 56 Ia. 117. So, where the delay was occasioned by the heir's promise of payment, McCollister *v.* King, 10 Ill. Ap. 243; or where the administrator was sole heir, and no application was made until after his removal. Beniteau *v.* Dodsley, 88 Mich. 152.

But the lien of debts on the land of the intestate is not extended by insolvency proceedings after his death. Aiken *v.* Morse, 104 Mass. 277. And laches in applying for sale are not excused by the fact that the record has been destroyed, Furlong *v.* Riley, 103 Ill. 628; or the widow's dower not ascertained, Id.; or that the land belonged to the intestate's unsettled partnership, McKean *v.* Vick, 108 Ill. 373; or had been assessed to his widow for her dower, Id.; or because of the mistake of the administrator as to the intestate's ownership of the land. Weinerth *v.* Frendley, 39 Mo. Ap. 333.

Where the limit of time is fixed by statute, and the time of actions pending is expressly reserved, the statutory reference of a disputed claim has been held to be an action within the meaning

of the exception. Matter of Bingham, 127 N. Y. 296. But if the land has been sold by a devisee after the expiration of the statutory time, his subsequent repurchase of the property will not subject it anew to the lien of the testator's debts. Dodge *v.* Stevens, 105 N. Y. 585. But the land may be discharged from general debts by lapse of the statutory time and still be subject to sale for debts that have been put into judgment. Bindley's Appeal, 69 Pa. St. 295.

Application by personal representatives. The statutes generally contemplate and provide for application for sale to be made by the personal representative. In such case he is not disqualified by the fact that he is himself a creditor of the deceased, Gayle *v.* Johnston, 72 Ala. 254; or the attorney of a creditor. Deans *v.* Wilcoxen, 25 Fla. 980. But an executor who has given the statutory bond as residuary legatee cannot apply. Thayer *v.* Winchester, 133 Mass. 447. So, a valid sale cannot be made before letters issued, Whitesides *v.* Barber, 24 S. C. 373; or by an administrator whose appointment is void. Allen *v.* Kellam, 69 Ala. 442; Waggener *v.* Lyles, 29 Ark. 47. In such case the sale may be set aside by a bill in equity where the probate record shows that the appointment was void. Culver *v.* Hardenburgh, 37 Minn. 225. But under such sale the deed gives the "color of title" required by the statute to relieve the purchaser from liability for damages or rent in an action for the land. Allen *v.* Kellam, *ubi supra.* So, if the administrator has failed to qualify by giving the required bond, the sale has been held, in California, to be void and not capable of ratification by a subsequent statute, Pryor *v.* Downey, 50 Cal. 338; although it is otherwise, in Kansas. Johnson *v.* Clark, 18 Kan. 157. Where such sale is void, the purchaser may refuse to pay the purchase money, even after taking possession of the land, and may set off his improvements and part payments against his liability for use and occupation. Waggener *v.* Lyles, 29 Ark. 47. And he may have relief in equity. Levy *v.* Riley, 4 Or. 392. In Kansas, a foreign executor may be authorized to sell the decedent's land, and even without bond, if none is required by the law of his testator's domicil. Higgins *v.* Reed, 48 Kan. 272. The court cannot order a sale of lands to be made by the administrator after his resignation, Wright *v.* Thornton, 87 Tenn. 74; or removal. Rumph *v.* Truelove, 66 Ga. 480. And a proceeding for removal will, in general, be cause for suspension, but not for dismissal, of the application, which may afterward proceed in the name of the new appointee. Steele *v.* Steele, 89 Ill. 51. Proceedings to remove an administrator will not, however, affect the title of a purchaser without notice under a sale already completed. Edwards *v.* Halbert, 64 Tex. 667. So, a deed may be made after final settlement of the administrator's accounts without a discharge from his trust in completion of a sale already made by him before the settlement. Wilkerson *v.* Allen, 67 Mo. 502.

In a collateral attack the order directing a conveyance to be made is sufficient evidence of the appointment and authority of the administrator. Farley *v.* Dunklin, 76 Ala. 530. And it is not necessary that the facts should appear on the record. Johnson *v.* Beagley, 65 Mo. 250.

If there are several executors or administrators, all should join in the application and the petition, one of them alone is insufficient, Croswell on Exrs. § 459; Woerner on Admn. § 464; Cobb *v.* Kempton, 154 Mass. 266; Hannum *v.* Day, 105 Mass. 33; Personette *v.* Johnson, 13 Stew. (N. J.) 173; and formerly, in New York, Fitch *v.* Wit-

beck, 2 Barb. Ch. 161; except in the case of a sole surviving administrator. Jackson *v.* Robinson, 4 Wend. 436. But application by one or more is allowed by the present statute. Code C. P. § 2751. But equity has no jurisdiction to compel a co-executor to join in a petition to the Probate Court to sell real estate, Southwick *v.* Morrell, 121 Mass. 520; although it may enjoin an ejectment suit brought by the heirs because the deed was signed by only one. Wartman *v.* Skinner, 1 Beas. 358.

An administrator will not be estopped from making application for sale of land for debts by his consent to a sale by the heir, Cole *v.* Lafontaine, 84 Ind. 446; nor by the consent of his predecessor to such sale, Baker *v.* Griffitt, 83 Ind. 411; nor an executor by consenting to a sale by the devisee. Moncrief *v.* Moncrief, 73 Ind. 587. Although after judgment in partition proceeding it has been held that he cannot apply for sale, but must look to the heirs for the proceeds received by them. Livingston *v.* Noe, 1 Lea 55.

Application by creditor. In some states, if the personal representative neglects to apply for the sale of land, a creditor may compel him to do so by petition to the Probate Court, Green *v.* Green, 64 N. C. 665; Stratton *v.* McCandliss, 32 Kan. 512; Estate of Kitchenman, 15 Phila. 519; Clement *v.* Cozart, 112 N. C. 412; or by bill in equity. Wilson *v.* Bynum, 92 N. C. 717. Even a foreign creditor may file such bill, although there are unsold lands of the decedent in his own domicil. Bird *v.* Key, 8 Baxt. 366.

In other states the creditor may himself apply to the Probate Court for an order to sell the land. Whisnand *v.* Small, 65 Ind. 120; Brown *v.* Hanauer, 48 Ark. 277 (after the discharge of the administrator). So, in *New York* (Code C. P. § 2750), unless he is secured by a mortgage or judgment lien. Redfield on Wills 672; Butler *v.* Emmett, 8 Paige 12. In such case the sale is made subject to the incumbrance (2 R. S. 108), but if the executor as devisee has paid off the incumbrances, and it afterward becomes necessary to sell the land for the debts of the testator, it cannot be sold subject to the amount which would have been due on the mortgage, Jackson *v.* Holladay, 3 Redf. 379; although he has recovered a judgment against the executor, Matter of Rosenfield, 5 Dem. 251; or he may join in an application with the administrator, Estate of Arguello, 85 Cal. 151; or may file a bill in equity to subject the lands to the payment of his debts, Scott *v.* Ware, 64 Ala. 174; and not make the personal representative a party, Hall *v.* Brewer, 40 Ark. 433; or may file such bill in equity against a foreign executor and trustee. Slatter *v.* Carroll, 2 Sandf. Ch. 573. But in Pennsylvania, his remedy is confined to proceedings to compel an application and sale by the administrator. Estate of Hutchison, 9 Lanc. L. Rev. 24, 94. So, in Mississippi, to the statutory proceedings. Springfield *v.* Hurt, 15 Fed. Rep. 307.

What may be sold. An undivided interest of the deceased as tenant in common may be ordered to be sold. Spence *v.* Parker, 57 Ala. 196; King *v.* Cabaniss, 81 Pa. St. 661. The share of a deceased heir should not be sold for his debts until the ancestor's estate is settled and the share ascertained, Hoge *v.* Junkin, 79 Va. 220; and the interest of the administrator already conveyed by him as one of the heirs should not be sold in payment of a debt due to himself, but he should be charged with his proportionate share and such fractional interest in the land reserved from sale. Liddel *v.* McVickar, 6 Halst. 44. So, the land of a nonresident decedent may be sold, Hobson *v.* Payne, 45 Ill. 158; or of a married woman (in pay-

ment of her separate debts), Shelton *v.* Hadlock, 62 Conn. 143; but land bought with her money cannot be sold for her husband's debts (although the title is in his name) without proof that the fact was known and relied on by his creditors. Goldsberry *v.* Gentry, 92 Ind. 193. Nor can land be sold for his debts, which is neither legally nor equitably his, as in the case of lands purchased by him in his wife's name with embezzled funds. Elliott *v.* Shuler, 10 Fed. Rep. 454. In some states an equitable title to lands may be sold, Atkinson *v.* Henry, 80 Mo. 670; Griffith *v.* Frederick County Bank, 6 Gill & J. 424; but not an equitable interest as purchaser under an unperformed contract, Hendrickson *v.* Hendrickson, 14 Stew. (N. J.) 375; especially where the right to a specific performance has been lost by failure to comply with the contract, Caverly *v.* Eastman, 142 Mass. 4; or where the contract has been completed under direction of the court and title taken in the heirs, Jones *v.* Woodstock Iron Co., 95 Ala. 551; or in the administrator himself (no order of sale being necessary in such case). Garret *v.* Bicknell, 64 Mo. 404.

In New York, the interest of the intestate under an uncompleted contract for purchase may be sold for his debts under order of the Probate Court. Redf. Surr. Pr. 667; but not property which is exempt from execution, such as a pew or cemetery plot, Redf. Surr. Pr. 667; nor lands devised to the executor with an express charge of debts, Code C. P. § 2759; or subject to a general power of sale, Matter of Davids, 5 Dem. 14; or subject to an implied charge and power of sale for debts. Estate of Rosenfield, 10 Civ. Pro. 201; Coogan *v.* Ockershausen, 55 N. Y. Super. Ct. 286. But a power of sale for legacies will not take the lands out of the jurisdiction of the Probate Court for sale for payment of debts. Redf. Surr. Pr. 667; Russell *v.* Russell, 36 N. Y. 581.

A remainder in fee may be sold. Elliott *v.* Shuler, 50 Fed. Rep. 454. So, public lands, although the certificate was granted or confirmed after the order of sale. Lyne *v.* Sanford, 82 Tex. 58; McDonald *v.* Burton, 68 Cal. 445. So, lands conveyed under absolute power of revocation on grantor's death may be sold for his debts. Alford *v.* Alford, 96 Ala. 385. In sales of land, as in marshaling of assets, the regular order is followed, *i. e.*, descended lands before lands devised. Stires *v.* Stires, 1 Halst. Ch. 224. Among lands specifically devised all are chargeable *pro rata*, Martin *v.* Cullen, 3 Stew. (N. J.) 426; including homestead, Smith *v.* Wells, 134 Mass. 11; and widow's thirds, Scott *v.* Wells (Minn.), 56 N. W. Rep. 828; and lands devised in lieu of dower, Bray *v.* Neill, 6 C. E. Gr. 343; or subject to the curtesy of the surviving husband (his interest being transferred to the surplus of the fund). Arrowsmith *v.* Arrowsmith, 8 Hun 606. But a deficiency in the sale of one parcel will be made up from the other. Martin *v.* Cullen, *ubi supra.*

The Probate Court cannot order a sale of lands held in trust, Sullivan *v.* Latimer, 38 S. C. 158; or (before settlement of a partnership) as partnership property, Kilbreth *v.* Roots, 33 W. Va. 600; nor lands that have escheated to the state. Den *v.* O'Hanlon, 1 Zab. 582.

Portion to be sold. The Probate Court may in its discretion determine how much land and which parcel shall be sold. State *v.* Conover, 4 Halst. 338; Bray *v.* Neill, 6 C. E. Gr. 343; Lilly *v.* Wooley, 94 N. C. 412. The whole may be sold where the part unsold would be injured by a partial sale, Norman *v.* Olney, 64 Mich. 553; Merrill *v.* Harris, 26 N. H. 142; even though the applying creditor was estopped by his conduct as to the undivided shares of some

of the heirs. Buel's Appeal, 60 Conn. 63. The adjustment of the proportions chargeable on the several parcels sold and unsold is left to be made in an action for contribution between the several heirs or devisees entitled. Maxwell *v.* Smith, 86 Tenn. 539; Lilly *v.* Wooley, 94 N. C. 412. In general, however, sale cannot be made of more land than is necessary for the payment of debts, Fralich *v.* Moon, 123 Ind. 75; nor of land not included in the application, Estate of Eddy, 12 Phila. 55; although a second sale under the same order may be made (after the lapse of several years), if needed for debts and properly included in the application and order. Adams *v.* Howard, 110 N. C. 15.

But the entire interest and estate of the deceased must be sold, and the land cannot be sold subject to testamentary charges on it, or to a subsequent incumbrance by the devisee, Hewitt *v.* Durant, 78 Mich. 186; or to the transfer of undivided shares by some of the heirs. Daly's Appeal, 47 Mich. 443. If the interest of the intestate is an undivided part, and the whole is inadvertently sold, the purchaser's title and possession are that of a tenant in common with the holders of the other parts. Fielder *v.* Childs, 73 Ala. 567.

Sale of adverse title. In general, a probate court will not order the sale of land where the title is disputed, Homer's Appeal, 55 Pa. St. 337; or where the land is held adversely by the heirs, *Georgia* (1882 Code, §§ 2564, 2483); Weitman *v.* Thiot, 64 Ga. 11. The purchaser will take subject to the rights of a grantee from the intestate. Daniel *v.* Wilson (Ga.), 18 S. E. Rep. 134. An adverse claim on the part of the petitioning creditor is, however, no reason for denying the petition. Grider *v.* Apperson, 38 Ark. 388. But an adverse title cannot be bought up by the administrator, Culberhouse *v.* Shirey, 42 Ark. 25; although an heir may acquire such title. Flenner *v.* Travelers' Insurance Co., 89 Ind. 164. Even an adverse title may be barred by the claimant's laches, if she is a party to the proceeding. Hutchinson *v.* Lamcke, 107 Ind. 121.

In general, a dispute of title cannot be determined by the Probate Court, Hewitt *v.* Hewitt, 3 Bradf. 265; Knickerbocker *v.* Decker, 4 Dem. 128; Liddel *v.* McVickar, 6 Halst. 44; Robison *v.* Furman, 2 Dick. (N. J.) 307; Gill *v.* Shirley, 55 Miss. 814; even on the petition of the purchaser at the sale ordered by it. Clement *v.* Foster, 71 N. C. 36. Prior to 1887 the Probate Court could not determine the title, in Illinois, nor award possession to the purchaser against an adverse holder. Harding *v.* Le Moyne, 114 Ill. 65.

But in some states the Probate Court is authorized to try the title on an application for the sale of land, Newell *v.* Montgomery, 129 Ill. 58 (act of 1887); Lantz *v.* Moffett, 102 Ind. 23; at least to the extent of determining the validity of a deed from the intestate under which the adverse title was claimed. Gregory *v.* Rhoden, 24 S. C. 90. So, where such deed was attacked by the administrator on the ground of fraud. Werts *v.* Spearman, 22 Id. 200. Where heirs are parties to the proceeding for sale, they are estopped from asserting a prior adverse title against the purchaser, Bowers *v.* Black, 129 Ill. 424; Lantz *v.* Moffett, 102 Ind. 23; but see, *contra*, as to other adverse claimants, Goldsberry *v.* Gentry, 92 Ind. 193. In some states lands which have been fraudulently conveyed by the deceased may be sold by order of the Probate Court for the payment of debts, *Maine* (1883 R. S. c. 71, § 22); Norton *v.* Norton, 5 Cush. 524; Brown *v.* Whitmore, 71 Me. 65; Wescott *v.* McDonald, 22 Me. 402; Greer *v.* Cayle, 84 N. C. 385; although the administrator has received payment of the con-

sideration notes given for the fraudulent transfer. Norton *v.* Norton, *ubi supra.* But in other states the proceeding for sale of lands in the Probate Court applies only to lands in possession, and not to lands fraudulently conveyed by the deceased in his lifetime. Bottorff *v.* Covert, 90 Ind. 508. And the purchaser at the administrator's sale cannot impeach the title of an adverse claimant under a deed of the intestate on the ground that it was made to defraud creditors. Hall *v.* Callahan, 66 Mo. 316. If, however, the sale by the intestate is incomplete, and the administrator files a bill against the purchaser from the decedent to enforce the sale, and makes the purchaser of part of the same land at his sale a party defendant, the latter may set up the fraudulent character of the first sale in support of his own title. Chapman *v.* Callahan, 66 Mo. 299.

Application of personal property. Although the personal property must be applied first to the payment of debts, it is not, in general, necessary that it should have been actually so applied and exhausted before applying for sale of the land. It is enough if it plainly appears in the petition that the personal property is insufficient to pay the debts. Estate of Topping, 18 Civ. Pro. 115; Doherty *v.* Boyd, 16 Lea 192; Maxwell *v.* Smith, 86 Tenn. 539; Shields *v.* McDowell, 82 N. C. 137; Blount *v.* Pritchard, 88 N. C. 145; Id. 446; Clement *v.* Cozart, 107 N. C. 695; Richardson *v.* Musser, 54 Cal. 196. But not if it has been paid over to distributees. Maxwell *v.* Smith, *ubi supra.* But see, to the effect that the personal property must have been first applied, State *v.* Conover, 4 Halst. 338; Stiers *v.* Stiers, Spen. 52; Bray *v.* Neill, 6 C. E. Gr. 343. The fact that there are uncollected and litigated demands belonging to the estate is no bar to the proceeding, Bridge *v.* Swain, 3 Redf. 487; Estate of Schroeder, Myrick's Prob. 7; nor the existence of personal property of which the administrator could not obtain possession. Bostwick *v.* Skinner, 80 Ill. 147. If the order is obtained on a false statement of assets, it will constitute a breach of the administrator's bond. Chapin *v.* Waters, 110 Mass. 195. For presumption as to want of personal property and other jurisdictional facts, see Woerner on Admn. § 488.

The existence of foreign personalty is no bar to the proceeding where it is shown that it is required in the foreign jurisdiction for the payment of debts there, Lawrence's Appeal, 49 Conn. 411; but no order for sale of lands in the decedent's domicil can be made where sufficient personalty has been administered and distributed in another state instead of being applied to the payment of debts. Young *v.* Wittenmyre, 123 Ill. 303.

A sale will not be ordered where the insufficiency of personal assets is occasioned by a devastavit of the administrator, Rowland *v.* Swope, 39 Ill. Ap. 514; or of his predecessor, Matter of Kingsland, 60 Hun 116; Code C. P. § 2759; Kingsland *v.* Murray, 44 N. Y. S. R. 515; Estate of Kelly, 11 Phila. 100; or it will not be ordered until the remedy against the sureties of the administrator has been exhausted, Merritt *v.* Merritt, 62 Mo. 150; Evans *v.* Fisher, 40 Miss. 643; Smith *v.* Brown, 99 N. C. 377; or against the former administrator, where his successor applies for the order of sale. Matter of Topping, 2 Connoly 187. But if the sureties of the administrator are nonresident, the land may be sold without pursuing the remedy against them. Lilly *v.* Wooley, 94 N. C. 412.

In some states the devastavit of the administrator is no reason for refusing an order to sell the real property. Smith *v.* Seaton, 117 Pa. St. 382;

Conger *v.* Cook, 56 Ia. 117. So, in New York, the devastavit of an executor (distinguished in this from an administrator because of the personal trust reposed in him by the testator). Matter of Bingham, 127 N. Y. 296. And the sale may be ordered without pursuing the remedy against the administrator's sureties, in Connecticut. Buel's Appeal, 60 Conn. 63.

So, a waste of personal assets by the administrator before the creditor's claim accrued is no defense to a creditor's bill for the sale of the real property. Hall *v.* Brewer, 40 Ark. 433. In like manner the land may be sold where the personal property was originally sufficient and has become insufficient by loss of value, as in the case of the emancipation of slaves. Lilly *v.* Wooley, 94 N. C. 412; Green *v.* Green, 64 N. C. 665.

For what debts. A sale of the decedent's land should not be ordered to pay single debts, but generally for all debts. Taylor *v.* Hanford, 6 Halst. 341. Debts not yet due may be included, Harley *v.* Barnard, 48 Tex. 83; Linman *v.* Riggins, 40 La. An. 761; although they have accrued too late for formal allowance. Pratt *v.* Houghtaling, 45 Mich. 457; Hall *v.* Brewer, 40 Ark. 433; Mann *v.* Everts, 64 Wis. 372. So a sale may be ordered for a debt of the intestate's firm, Bridge *v.* Swain, 3 Redf. 487; or to reimburse the administrator for moneys advanced by him to pay other creditors, Livingston *v.* Newkirk, 3 Johns. Ch. 312; Liddel *v.* McVickar, 6 Halst. 44; Jones *v.* Le Baron, 3 Dem. 37; Ball *v.* Miller, 17 How. Pr. 300; except such as have been barred by non-claim. Evans *v.* Halleck, 83 Mo. 376. And a debt due to the executor himself may be barred by his laches as against the land as well as the personal estate of the deceased. Matter of Willard, 2 Connoly 112. Lands may be sold, in general, to pay debts secured by mortgage on other lands. Day *v* Graham, 97 Mo. 398.

The decedent's land cannot be sold for debts that are barred by the Statute of Limitations, Ferguson *v.* Scott, 49 Mass. 500; Tarbell *v.* Parker, 106 Mass. 347; Lamson *v.* Schutt, 4 Allen 359, Estate of Taylor, 15 Phila. 515; although the debt was put into judgment against the personal representative before the original claim was barred. Carman *v.* Brown, 4 Dem. 96; Raynor *v.* Raynor, 25 Hun 264. Where a debt secured even by mortgage lien is barred, it cannot share in the proceeds of a sale of the land made afterward. Estate of Cake, 157 Pa. St. 457. But the statute will not run after allowance of the claim, Estate of Arguello, 85 Cal. 151; or after the commencement of proceedings for the sale of the real estate. Farrington *v.* King, 1 Bradf. 182; Vance *v.* Sanders, 8 Baxt. 294.

In some states sale will not be ordered for the payment of administration expenses only, Beadle *v.* Steele, 86 Ala. 413; Fitzgerald *v.* Glancy, 49 Ill. 465; Walker *v.* Diehl, 79 Ill. 473; Dean *v.* Dean, 3 Mass. 258; Fitch *v.* Witbeck, 2 Barb. Ch. 161; at least not until after final settlement of the estate, Estate of Grice, 11 Phila. 107; or unless incurred in paying the debts of the estate, Mays *v.* Rogers, 52 Ark. 320; nor for expenses and distribution only, Sermon *v.* Black, 79 Ala. 507; but see, *contra*, as to expenses and executor's commissions, Personette *v.* Johnson, 13 Stew. (N. J.) 73. So, a sale will not be ordered for the administrator's commissions, Moore *v.* Ware, 51 Miss. 206; or for his commissions and the costs of a contested probate, Estate of Meakin, 5 Civ. Pro. 421; Smith *v.* Meakin, 2 Dem. 129; or for the executor's unnecessary expenses in defense of a testamentary trust, Estate of Wilcox, 11 Civ. Pro. 115; or costs of unneces-

sary litigation. Owens *v.* Childs, 58 Ala. 113. In New York, a sale may be ordered for the cost of a tombstone (included in the statutory "funeral expenses"). Owens *v.* Bloomer, 14 Hun 296; Laird *v.* Arnold, 42 Hun 136; Matter of King, 10 Civ. Pro. 175. Even a sale for family allowance and future expenses cannot be questioned collaterally, Richardson *v.* Butler, 82 Cal. 174; but in Missouri, such sale is void even in a collateral proceeding. Presbyterian Church *v.* McElhinney, 61 Mo. 540.

Jurisdiction—Allegation—Proof. As to the particularity required in setting out the debts due in an application for order of sale, see Abernethy *v.* O'Reilly, 90 Ala. 495; Wright *v.* Ware, 50 Ala. 549; Moffitt *v.* Moffitt, 69 Ill. 641; Adams *v.* Thomas, 44 Ark. 267; Jackson *v.* Weaver, 98 Ind. 307; Stanley *v.* Noble, 59 Ia. 666; Doherty *v.* Choate, 16 Lea 192; Young *v.* Young, 12 Lea 335; Morrill *v.* Coble, 1 Lea 465; Blount *v.* Pritchard, 88 N. C. 445; McDonald *v.* Hutton, 4 Halst. Ch. 473; Wilkerson *v.* Allen, 67 Mo. 502; Camden *v.* Plain, 91 Mo. 117; Raynor *v.* Gordon, 23 Hun 264; Matter of German Bank, 39 Hun 181; Gillenwaters *v.* Scott, 62 Tex. 670; Estate of Taylor, 15 Phila. 515. As to the particularity required in setting out the amount and insufficiency of the personal property in the application for the order of sale, see Richmond *v.* Foote, 3 Lans. 244; Raynor *v.* Gordon, 23 Hun 264; Clement *v.* Cozart, 107 N. C. 695; Wright *v.* Edwards, 10 Oreg. 298; McDonald *v.* Hutton, 4 Halst. Ch. 473; Reynolds *v.* Schmidt, 20 Wis. 374; Estate of Taylor, 15 Phila. 515; Deans *v.* Wilcoxen, 18 Fla. 531; S. C. 25 Id. 980; Stanley *v.* Noble, 59 Ia. 666; Blount *v.* Pritchard, 88 N. C. 445; Brown *v.* Woody, 22 Mo. Ap. 253; Sharp *v.* Sharp, 76 Ala. 312; Beniteau *v.* Dodsley, 88 Mich. 152; Adams *v.* Thomas, 44 Ark. 267. So, as to the need of an itemized account, Greyson *v.* Weddle, 63 Mo. 523; Ferguson *v.* Carson, 86 Mo. 673; Ford *v.* Walsworth, 15 Wend. 449; Lyne *v.* Sanford, 82 Tex. 58; Jackson *v.* Houston, 84 Tex. 622; or an account rendered preliminary to the application. Bree *v.* Bree, 51 Ill. 367; Estate of Treno, 11 Phila. 42; Kilbreth *v.* Roots, 33 W. Va. 600; Maeck *v.* Sinclear, 10 Vt. 103.

The heirs may dispute the existence of the debts, Cole *v.* Lafontaine, 84 Ind. 446; Lehman *v.* Worley, 40 La. An. 620; even after the order of sale is made, on the application for confirmation of the sale, Fenix *v.* Fenix, 80 Mo. 27; or show that they are barred by the Statute of Limitations, Mead *v.* Jenkins, 4 Redf. 369; Smith *v.* Brown, 99 N. C. 377; Gayle *v.* Johnston, 72 Ala. 254; Warren *v.* Hearne, 82 Ala. 554; or by the statute of non-claim, Bomar *v.* Hagler, 7 Lea 85; or may set up an equitable defense to the claim. Campbell *v.* Renwick, 2 Bradf. 80. So, the objection may be made by the guardian of an infant heir, Prewitt *v.* Wartham, 79 Ky. 287; or the grantee of an heir, Matter of Topping, 2 Connoly 187; S. C. 18 Civ. Pro. 115; or a judgment creditor of a devisee, Raynor *v.* Gordon, 23 Hun 264; or even by one to whom the intestate has given property in fraud of creditors. Syme *v.* Riddle, 88 N. C. 463, following Bevers *v.* Park, 88 N. C. 467.

As to the sufficiency of the proof of debts in proceedings for sale of land, see Jones *v.* Le Baron, 3 Dem. 37; State *v.* Conover, 4 Halst. 338; Taylor *v.* Hanford, 6 Id. 341; Bloom *v.* Cate, 7 Lea 471; Sample *v.* Barr, 25 Pa. St. 457; Cobb *v.* Kempton, 154 Mass. 266; or the need of formal presentment, Farrington *v.* King, 1 Bradf. 182; or filing, Ales *v.* Plant, 61 Miss. 259; or of formal allowance by the Probate Court,

Grayson *v.* Weddle, 63 Mo. 523; Hobson *v.* Payne, 45 Ill. 158; Walker *v.* Diehl, 79 Ill. 473; or of a judgment against the executor, Tenny *v.* Poor, 14 Gray 500; or the conclusiveness of a previous allowance or rejection of the claim by the administrator. Matter of Haxtun, 102 N. Y. 157, revg. 33 Hun 364. A foreign allowance is not enough, Hobson *v.* Payne, *ubi supra;* nor a foreign accounting by an ancillary administrator. Bray *v.* Neill, 6 C. E. Gr. 343. As to what proof is sufficient under the statute, in Alabama, to establish the necessity for sale of the real estate, see Bland *v.* Bowie, 53 Ala. 152; Bozeman *v.* Bozeman, 83 Ala. 416; Stevenson *v.* Murray, 87 Ala. 442; Goodwin *v.* Sims, 86 Ala. 102; Hooper *v.* Hardie, 80 Ala. 114; Thompson *v.* Boswell, 97 Ala. 570. And see, as to the necessity for the jurisdictional facts appearing on the face of the order, Starkey *v.* Hammer, 1 Baxt. 438.

The Probate Court has jurisdiction to determine as to disputed claims, *New York* (Code C. P. § 2750 *et seq.*), Hopkins *v.* Van Valkenburgh, 16 Hun 3; Estate of Macapes, 3 Dem. 19; Adams *v.* Westbrook, 61 How. Pr. 138; Kammerer *v.* Ziegler, 1 Dem. 177; Hall *v.* Woodman, 49 N. H. 295; which are already liens, Matter of Haxtun, 102 N. Y. 157, revg. 33 Hun 364; but not as to their validity, Smith *v.* Smith, 12 C. E. Gr. 445; or as to the amount in dispute. Jackson *v.* Holladay, 3 Redf. 379. And while a claim is in litigation, no order should be made to sell the decedent's land for its payment. Smith *v.* Brown, 99 N. C. 377. A judgment against the administrator has been held to be conclusive upon the heirs, in Faran *v.* Robinson, 17 O. St. 242; Huggins *v.* Oliver, 21 S. C. 147; Long *v.* Oxford, 108 N. C. 280; and not to be so, in Lehman *v.* Bradley, 62 Ala. 31; Scott *v.* Ware, 64 Ala. 174; Wenninger *v.* Fietsam, 29 Ill. Ap. 648; Wood *v.* Byington, 2 Barb. Ch. 387; nor upon a devisee. Colson *v.* Brainard, 1 Redf. 324. But the heirs may attack a judgment against the administrator for fraud. Sidener *v.* Howes, 37 O. St. 533. So, the heirs or devisees will not be concluded by a judgment rendered against the administrator by consent, Kavanagh *v.* Wilson, 5 Redf. 43; or confession, Dean's Appeal, 87 Pa. St. 24; nor by the revivor against the administrator of a judgment rendered against the intestate. Champion *v.* Cayce, 54 Miss. 695. Nor will an executor or administrator be concluded by a judgment in a foreign jurisdiction against the foreign ancillary administrator. Rosenthal *v.* Renick, 44 Ill. 202. So, the regular allowance of a claim is conclusive evidence of the debt in a proceeding for the sale of land in some states, Vosler *v.* Brock, 84 Mo. 574; but not in others, Scherer *v.* Ingerman, 110 Ind. 428; O'Haleran *v.* O'Haleran, 115 Ind. 493; Goeppner *v.* Leitzelmann, 98 Ill. 409; and in Missouri, they may contest such allowance on the ground of fraud. Casey *v.* Murphy, 7 Mo. Ap. 247.

The decision of the court in a proceeding for the sale of land is conclusive in any collateral proceeding as to the existence and validity of the debts, Deans *v.* Wilcoxen, 25 Fla. 980; Curran *v.* Kirby, 37 Minn. 330; and the insufficiency of the personal property, Grayson *v.* Weddle, 63 Mo. 523; Foxworth *v.* White, 72 Ala. 224; and other jurisdictional facts, Stanley *v.* Noble, 59 Ia. 666; Norman *v.* Olney, 64 Mich. 554; Bray *v.* Adams, 114 Mo. 486; Egan *v.* Grece, 79 Mich. 629; especially where they are recited in the decree, Massey *v.* Smith, 73 Ala. 173; Pettus *v.* McClannahan, 52 Ala. 55; but only when they appear. Starkey *v.* Hammer, 1 Baxt. 438. And (except for fraud or mistake) such facts cannot afterward be questioned by a bill in equity.

Lebanon Savings Bank *v.* Waterman, 65 N. H. 88.

Proceeds of sale. The proceeds of real estate sold by an administrator or executor for debts are assets in his hands for which he must account after deducting the amount of incumbrances on the land paid off by him out of the proceeds, Ryker *v.* Vawter, 117 Ind. 425; Harris *v.* Millard, 17 Ill. Ap. 512. So, money paid by the heir or devisee to prevent a sale of the land. Fay *v.* Taylor, 2 Gray 154. So too, the proceeds of an unauthorized sale of land which is ratified by the heirs. McDonough *v.* Hanifan, 7 Ill. Ap. 50. In the distribution of the proceeds claims not yet due are entitled to payment equally with other debts, Cook *v.* Woodard, 5 Dem. 97; Code C. P. § 2793; and a creditor receiving more than his proportionate share of the proceeds may be obliged to contribute to other creditors. Ewing *v.* Maury, 3 Lea 381. But the proceeds of a sale of the decedent's lands for debts are not "new assets" for the benefit of creditors who have been barred by non-presentment of their claims. Chenery *v.* Webster, 8 Allen 76. An administrator is only accountable for the proceeds of the decedent's undivided interest, if it is sold with that of others, Diehl's Appeal, 33 Pa. St. 406; and he may show a mistake as to the amount received. Id. He cannot, however, show that the lands sold did not belong to his in testate on a bill filed for account of the purchase money received. Miller *v.* Wilkins, 79 Ga. 675. He is, in general, only accountable for the price received, and not for the value of the lands, Richardson *v.* Sage, 57 Cal. 212; although a greater price was offered him after the sale. Estate of Worcester, 60 Vt. 420.

A judgment creditor who is not included as a party in the Probate Court proceedings may reach the surplus proceeds after payment of other debts. Rhinehart *v.* Murray, 15 Lea 469. But the creditors provided for by the order of sale are preferred, if necessary, to the extent of the entire proceeds. Kenyon *v.* Talbot, 2 Dem. 548. But where the land is sold on a creditor's bill in equity, the proceeds do not go to the personal representative or fall within the ground of the Probate Court. United States Bank *v.* Burke, 4 Blackf. 141. In general, however, the Probate Court will have exclusive jurisdiction to distribute the surplus among the heirs after payment of creditors and settlement of the administrator's account. Muldoon *v.* Muldoon, 133 Mass. 111; Clocke *v.* Igglesden, 5 Redf. 339. But it cannot set aside the order of sale because the administrator has misapplied the proceeds. Matter of Olmsted, 17 Abb. N. C. 320; Crombie *v.* Engle, 4 Harr. 82.

The surplus proceeds of sale are real estate and distributable as such, Estate of Cox, 15 Phila. 513; Lerch *v.* Oberly, 3 C. E. Gr. 575, affg. Id. 346; Donahy *v.* Hall, 18 Stew. (N. J.) 720; Hunter *v.* Law, 68 Ala. 365; Alexander *v.* Wolfe, 88 N. C. 398; Teague *v.* Corbitt, 57 Ala. 529; and will descend as such on the death of the heir or devisee before distribution, Matter of Igglesden, 3 Redf. 375; especially where he dies during his minority. Fidler *v.* Higgins, 6 C. E. Gr. 138; State *v.* Robinson, 78 N. C. 222. See, however, *contra*, Grider *v* McClay, 11 S. & R. 223. But a judgment at law recovered against an heir after sale of the land under a testamentary power of sale for the debts of his ancestor will not become a lien on the share of the surplus payable to him. Cronise *v.* Hardt, 47 Md. 433. But the surplus proceeds of a sale of foreign lands are to be accounted for in the home jurisdiction as personalty. Jennison *v.* Hapgood, 10 Pick. 77.

If an owner dies seized before pay-

ment of the purchase money and the land is afterward sold for the payment of his debts, such unpaid and unsecured purchase money is entitled, in general, to no preference by way of vendor's lien, Ross *v.* Julian, 70 Mo. 209; Kimmell *v.* Burns, 84 Ind. 370; Hillbish's Appeal, 89 Pa. St. 490; although it is otherwise, in North Carolina, Moore *v.* Ingram, 91 N. C. 376, and formerly, in Georgia, McClure *v.* Williams, 58 Ga. 494. And in North Carolina, a mortgagee of the purchaser takes subject to the lien of his unpaid purchase money. Harris *v.* Bryant, 83 N. C. 568.

What estate sold. Where the administrator's proceeding for sale is taken within the statutory time, the sale transfers the entire estate of the deceased, Warrick *v.* Hunt, 6 Halst 1; Curtis *v.* Campbell, 54 Mich. 340; and divests the title of the heirs, Cook *v.* Cook, 67 Ga. 381; Benedict *v.* Bonnet, 39 La. An. 972; and of their grantees, Horner *v.* Hasbrouck, 41 Pa. St. 169; Smith *v.* Seaton, 117 Pa. St. 382; Faran *v.* Robinson, 17 O. St. 243; Hall *v.* Brewer, 40 Ark. 433; Mowry *v.* Robinson, 12 R. I. 152; mortgagees, Succession of Escarraguell, 36 La. An. 155; Battle *v.* Duncan, 90 N. C. 541; Dancy *v.* Duncan, 96 N. C. 111; and creditors by execution sale, Stackhouse *v.* Wheeler, 17 S. C. 91; whose rights are thereupon transferred to the heir's share of the surplus proceeds, if there are any. So, an executor's sale for debts divests the title of devisees, Shaw *v.* Nicholay, 30 Mo. 99; and the dower right of the devisee's widow. Cockerill *v.* Armstrong, 31 Ark. 580. The devisee takes subject to his testator's debts, although the land would be exempt from execution in his hands. Graves *v.* Graves, 106 Ind. 118. Where the heirs or devisees have sold part of the land descended or devised, their grantees will be entitled to have the lands marshaled and the unsold lands sold first. Matter of Clark, 3 Redf. 225; Garibaldi *v.* Jones, 48 Ark. 230; Howell *v.* Duke, 40 Ark. 102.

On the other hand, if the proceedings for sale are taken after the expiration of the statutory time, the sale will only carry the title which the heirs or devisees then have, Bockover *v.* Ayres, 7 C. E. Gr. 13; Flenner *v.* Travelers' Insurance Co., 89 Ind. 164; Skillman *v.* Van Pelt, Saxt. 512; subject to the rights of their grantees, Murchison *v.* Whitted, 87 N. C. 465; McCartan *v.* McLaughlin, 88 N. C. 391; and mortgagees, Fonda *v.* Chapman, 23 Hun 119; or judgment creditors, Bockover *v.* Ayres, 7 C. E. Gr. 13; or to the purchaser under judicial sale of the land of the infant heir. Parkinson *v.* Jacobson, 18 Hun 353.

Incumbrances—Dower. In general, the estate of the deceased in the land is sold subject to existing incumbrances, Croswell on Exrs. § 463; Matter of Haig, 6 Dem. 454; McCallam *v.* Pleasants, 67 Ind. 542; Stebbins *v.* Field, 43 Mich. 333; Estate of Grice, 11 Phila. 107; Estate of Lewis, 16 Phila. 367; Sebastian *v.* Johnson, 72 Ill. 282; Kenley *v.* Bryan, 110 Ill. 652; unless otherwise ordered, Massey *v.* Jerauld, 101 Ind. 270; Moody *v.* Shaw, 85 Ind. 88; or unless the claimant is a party to the proceeding, Vail *v.* Rinehart, 105 Ind. 6; or has lost his lien by laches. Cramp's Appeal, 81 Pa. St. 90. But the sale is not subject to an undisclosed trust. Rapp's Appeal, 100 Pa. St. 531. In some states the court may, however, order the land to be sold free from incumbrances, Culver *v.* Hardenbergh, 37 Minn. 225; Stone *v.* Strong, 42 O. St. 53; the mortgage or lien being in such case payable out of the proceeds. Arndt's Appeal, 117 Pa. St. 120; Newsom *v.* Carlton, 59 Ga. 516. So, in Massachusetts, by bill in equity. Mason *v.* Daly, 117 Mass. 406.

In like manner the administrator's sale is subject to the dower or statutory right of the widow, Compton *v.* Pruitt, 88 Ind. 171; Flenner *v.* Benson, 89 Ind. 108; Winbery *v.* Schwegeman, 97 Ind. 528; Clark *v.* Deutsch, 101 Ind. 491; Livingston *v.* Cochran, 33 Ark. 294; Cummings *v.* Johnson, 65 Miss. 342; although she made the sale herself as administratrix of her husband, Gip *v.* Lawback, 2 Harr. (N. J.) 442; or although the administrator who sold was also her administrator (her estate being a fee simple). Elliott *v.* Frakes, 90 Ind. 389. If she is insane, her title will be divested by the consent of her guardian to the sale. Smock *v.* Reichwine, 117 Ind. 194. On the administrator's application for sale her dower may be set off, and the land set off be then sold subject to her life estate. Kenley *v.* Bryan, 110 Ill. 652. But the administrator cannot sell on condition that the purchaser discharge the incumbrance and dower. Selb *v.* Montague, 102 Ill. 446. If the widow does not assent to a sale free from dower, the dower should be assigned before sale. Kilbreth *v.* Root, 33 W. Va. 600. In any case her dower must contribute to the payment of prior incumbrances. Selb *v.* Montague, *ubi supra.*

On the other hand, the sale may be made free from dower by order of the Probate Court, Schmidt *v.* Willis, 13 Stew. (N.J.) 515; Pepper *v.* Zahnsinger, 94 Ind. 88; or on a bill in equity filed for the purpose upon her consent. Underwood *v.* Underwood, 22 W. Va. 303.

Causes for denial of sale. An order for sale for debts will not be refused because of the pendency of a foreclosure, Fitzsimmon's Appeal, 40 Pa. St. 422; or partition suit, Mead *v.* Jenkins, 4 Redf. 369; except, in Pennsylvania (a decree for sale in partition discharging by force of the statute all liens including decedent's debts), Estate of Kennedy, 17 Phila. 507; nor by reason of a partition by agreement among the heirs pending the proceeding for administrator's sale. Rice *v.* Dickerman, 47 Minn. 527. But where the executrix has begun proceedings to marshal the assets and have the lands sold for the payment of debts, an application by creditors will be enjoined. Stackhouse *v.* Wheeler, 17 S. C. 91.

So, where the deceased left a will giving an express power of sale to the executor, an order of sale is not necessary, and will not be made by the Probate Court either on the application of the executor, Dennis *v.* Jones, 1 Dem. 80; Matter of Davids, 5 Dem. 14; Wilson *v.* Holt, 83 Ala. 528; Peirce *v.* Graham, 85 Va. 227; or of an administrator *cum testamento annexo* (who is authorized by statute to execute the power), Rollins *v.* Rice, 59 N. H. 493; or a creditor, Matter of Gantert, 48 N. Y. S. R. 889; unless such power of sale does not contemplate the payment of debts, Estate of Campbell, 21 N. Y. Supp. 685; unless the power of sale has been partly executed by the executor for other purposes, and a further sale is necessary after his removal because of his devastavit. Wood *v.* Nesbitt, 16 N. Y. Supp. 918. So, an order of sale will be denied where a power of sale is given in the will by clear implication. Matter of Hesdra, 2 Connoly 514. So too, if the land is specifically devised for the payment of debts, Davis *v.* Hoover, 112 Ind. 423; or is charged with the payment of the debts. Matter of Rosenfield, 5 Dem. 251; Smith *v.* Coup, 6 Dem. 45. But if the lands charged are insufficient, the court may order the sale of other lands. Duncan *v.* Gainey, 108 Ind. 579.

In Iowa, the statute allows any heir to prevent the sale of the land for debts by giving bond for the payment of the debts (Code, § 2396). This will not, however, prevent a sale by the executor

for debts under the express direction of the will. Estate of Baggen, 78 Ia. 171.

Possession and control of real property. In furtherance of the policy of making the lands of the decedent assets for the payment of debts in the hands of the personal representative, in addition to the provisions for sale by order of the probate sale, it is especially enacted that the whole estate shall be liable for the payment of debts, in *Ohio* (1890 R. S. § 5975), *Rhode Island* (1882 P. S. c. 189, § 1), the personal property primarily; *Tennessee* (1884 Code, § 3090), *Virginia* (1887 Code, § 2665), *West Virginia* (1891 Code, c. 86, § 3). And this is provided in effect by many statutes already referred to relating to probate sale, and in the statutes hereinafter referred to relating to action against heirs and devisees. In general, the lands are not assets strictly speaking, but may be made such by the statutory proceedings, Haines *v.* Price, Spen. 480; Vaughn *v.* Deloatch, 65 N. C. 378; and not otherwise. Platt *v.* Platt, 105 N. Y. 488. So, the whole estate is liable for debts, expenses of administration, and family expense, in *California* (Code C. P. 1563), *Nevada* (1885 G. S. § 2849), *Oregon* (1892 An. L. § 1157), *Vermont* (1880 R. L. § 2184); as well as for legacies, in *New Hampshire* (1891 P. S. c. 189, § 1). But where the lands are sold in a partition among the heirs, the proceeds will not be taken to reimburse a volunteer for the payment of the funeral expenses. Fay *v.* Fay, 16 Stew. (N. J.) 438. In *Kansas* (1879 C. L. §§ 18–20), the statute giving the distributive share of a deceased child to his heirs makes such share subject to the debts of the deceased parent (who never had an interest in the property inherited). Fletcher *v.* Wormington, 24 Kan. 259.

The statute gives to the personal representative the right to possession of the lands until the estate is settled, in *Arkansas* (1884 Dig. Stats. §§ 68, 170), *California* (Civ. Code, § 1384; Code C. P. § 1581), *Connecticut* (1888 G. S. § 577), *Georgia* (1882 Code, § 2486), for payment of debts or distribution; *Michigan* (1882 An. Stats. § 5875), *Minnesota* (1891 Stats. § 5702), *Nevada* (1885 G. S. § 2863), *Texas* (1888 R. S. Art. 1877), *Vermont* (1880 R. L. § 2182), as long as necessary. In *California* (Code C. P. § 1453), after the time for presentation of claims has expired, if further rents are not needed for the payment of debts, the Probate Court will order the surrender of possession to the heir or devisee. The personal representative may take the possession and the rents, if there be no heir or devisee present to take possession, in *Indiana* (1894 Rev. § 2528), *Iowa* (1888 R. C. § 2402). The statute also gives him the rents and profits until the estate is settled, in *Alabama* (1886 Code, § 2102), with power to lease the same; *California* (Code C. P. § 1452), *Connecticut* (1888 G. S. § 577), unless specifically devised; *Minnesota* (1891 Stats. § 5702), *Michigan* (1882 An. Stats. § 5875), with power to lease the same; *Nevada* (1885 G. S. § 2783), *New Hampshire* (1891 P. S. c. 189, § 13), if the estate is insolvent. In *Texas* (1888 R. S. Art. 2051), he has power to lease the lands if for the interest of the estate. The lands are subject to the control of the personal representative, in *Arkansas* (1884 Dig. Stats. §§ 68, 170), *Connecticut* (1888 G. S. § 577), unless specifically devised. The rents that may be received by the personal representative are assets, in *Maine* (1883 R. S. c. 64, § 56), and in *Delaware* (1893 R. C. c. 89, § 28), after payment of necessary repairs. In *Florida* (1892 R. S. § 1917), he may take possession for the payment of debts. See too, Woerner on Admn. § 337.

Under these statutes the right of pos-

session has been held to be in the personal representative to the exclusion of the heirs and devisee, Harper *v.* Streetz, 53 Cal. 655; Culberhouse *v.* Shirey, 42 Ark. 25; but not in disregard of the widow's right of dower. Culberhouse *v.* Shirey, *ubi supra.* An executor paying the debts may hold possession of the real property until the estate is settled. McCullough *v.* Wise, 57 Ala. 623. The right of possession is for the payment of debts, State *v.* Probate Court, 25 Minn. 22; and cannot itself be sold by the administrator, but passes to his successor, Kline *v.* Moulton, 11 Mich. 370; and ceases with the repeal of the statute; Campau *v.* Campau, 25 Mich. 127; and can only be exercised where it is necessary for that or other statutory purposes, Rough *v.* Womer, 76 Mich. 375; Chowning *v.* Stanfield, 49 Ark. 87; *e. g.*, to protect the estate *pendente lite* as to probate, Wilmarth *v.* Reed, 83 Mich. 44; but not, in general, where there are no debts. Flood *v.* Pilgrim, 32 Wis. 376. The possession by an heir who is also administrator is no bar to the statutory proceeding for sale of the land for the decedent's debts. Palmer *v.* Palmer, 13 Gray 328. The administrator's possession must be actual, and not constructive. Calhoun *v.* Fletcher, 63 Ala. 574. But one devisee may hold possession with consent of the others as an executor for the benefit of the estate, and will not be subject to attachment by his individual creditors. Brigham *v.* Elwell, 145 Mass. 520. If, however, the land or the rents are not required for the payment of debts, the rents will belong to the devisees, notwithstanding the executor's statutory right of possession. Remington *v.* American Bible Society, 44 Conn. 512. The statutes authorizing possession by an administrator do not apply to an administration then pending, Van Fleet *v.* Van Fleet, 49 Mich. 610; nor extend to the homestead if there is sufficient other real property. McManany *v.* Sheridan, 81 Wis. 538. An administrator may allow the heirs to collect the rents. Cross *v.* Johnson, 82 Ga. 67. And the administrator's neglect in getting possession will render him liable only so far as the deceased was entitled, although he may have inventoried other land. Wheeler *v.* Bolton, 92 Cal. 159. The heirs are entitled to the possession and rents until sale by administrator for debts, Draper *v.* Barnes, 12 R. I. 156; Cruikshank *v.* Luttrell, 67 Ala. 318; or until order of sale for debts, Estate of Merkel, 131 Pa. St. 584; or until the administrator leases the property. Cruikshank *v.* Luttrell, *ubi supra.*

For actions relating to real property by executors and administrators, see p. *1826, n.; and for such actions against executors and administrators, see p. *1875.

Rents. Rents accruing before testator's death go to the executor as assets. Ball *v.* First National Bank, 80 Ky. 501. But this is so, in Indiana, only where they are needed for the payment of debts. Humphries *v.* Davis, 100 Ind. 369. In general, rents accruing after the death of the owner of real property are not assets, Evans *v.* Hardy, 76 Ind. 527; Crane *v.* Guthrie, 47 Iowa 542; Estate of Burnell, 13 Phila. 387; Allen *v.* Van Houten, 4 Harr. (N. J.) 47; Wathen *v.* Glass, 54 Miss. 382; but belong to the heirs or devisees, McClead *v.* Davis, 83 Ind. 263; until the land is sold under the order of the Probate Court for debts. Newcomb *v.* Stebbins, 9 Met. 525; Wood *v.* Bott, 56 Miss. 128; Littlefield *v.* Eaton, 74 Me. 516. Until such time the burden of current taxes and interest on incumbrances falls in like manner on the heir, and they cannot be paid as debts of the deceased out of the proceeds of the sale. Estate of Urban, 17 Phila. 429. Even rents collected by the administrator or executor are not assets, Kidwell *v.* Kidwell, 84 Ind. 224; and need not be applied to

the debts. Bucher *v.* Bucher, 86 Ill. 377. So, rents collected in another state without proof of a *lex loci rei sitæ* to that effect. McPike *v.* McPike, 111 Mo. 216. An account for rents so collected is due to the heirs or devisees, Lucy *v.* Lucy, 55 N. H. 9; Trimble *v.* Pollock, 77 Ind. 576; Kimball *v.* Sumner, 62 Me. 305; or in the case of heirs taking possession of the mansion and renting it, to the widow, Conger *v.* Atwood, 28 O. St. 134; and if the rents have been inadvertently included in the account of the executor, it should be corrected. Smith *v.* Smith, 13 Ala. 329.

But in Vermont, the rents for one year go to the executor as assets, notwithstanding the sufficiency of the personal property. Allen *v.* Tarbell, 65 Vt. 150. If the executor holds possession of the real property, he will be personally liable for the rental value, if required for debts. Eppinger *v.* Canepa, 20 Fla. 262. And in equity rents are assets, if needed for the payment of debts, and may be impounded as such pending a chancery suit for administration. Coddington *v.* Bispham, 9 Stew. (N. J.) 574. So, if the executor is also a devisee, and neglects to make the necessary application for the sale of the real property for debts, he will be accountable for the proportion of the rents received by him. Bray *v.* Neill, 6 C. E. Gr. 342. Rents under a coal lease for a stated annual sum have been held to partake of the nature of the purchase money for personal property sold, and to be personalty in the hands of the administrator. Hope's Appeal (Pa.), 29 W. N. C. 365. And, in general, rents received by the personal representative under color of his office or collected under the directions of the will should be included in his accounts as executor. Woerner on Admn. § 513.

Transfer of real property. Except as given by statute or by will, the personal representative has, in general, no power to dispose of the decedent's land. Litterall *v.* Jackson, 80 Va. 604. He cannot create a lien on it for services rendered to him for the estate, Platt *v.* Platt, 105 N. Y. 488; Fine *v.* Freeman, 83 Tex. 529; nor mortgage it, Black *v.* Dressell, 20 Kan. 153; nor bind the lands or the estate by an agreement for the exchange of lands, Williams *v.* County of San Saba, 59 Tex. 442; or by proceedings for laying out a highway, Rush *v.* McDermott, 50 Cal. 471; or a public plat or map, People *v.* Detroit Board, 41 Mich. 724; or by release of a right of way to a railroad. Hankins *v.* Kimball, 57 Ind. 42. He may, however, become individually liable for the proceeds of an unauthorized sale of real property. Loving *v.* Ashlin, 76 Va. 907.

In some states he has the statutory power to make a lease. Eoff *v.* Thompkins, 66 Mo. 225 (by order of the court); and will be liable for neglecting to do so, or for neglect to have dower assigned. Clark *v.* Knox, 70 Ala. 607. But he cannot make a lease for a term of five years with covenants for repair. Weise *v.* Rich, 77 Mich. 325. In North Carolina, the statute (Code, § 1413) authorizing him to "make rentings of real property by auction" has been construed to refer only to sale of leaseholds, not to renting of lands. Reeves *v.* McMillan, 101 N. C. 479. A tenant of the executor cannot question his power to make the lease. Whitford *v.* Crooks, 50 Mich. 40; Scott *v.* Meadows, 16 Lea 290.

Title to lands. The administrator or executor has no title to the real property, Chowning *v.* Stanfield, 49 Ark. 87; Le Moyne *v.* Quimby, 70 Ill. 399; Harding *v.* Le Moyne, 114 Ill. 65; Senat *v.* Findley, 51 Ia. 20; but the title, subject to be divested by sale for debts, is in the heirs, Turner *v.* Kelly, 67 Ala. 173; or devisees, Le Moyne *v.* Harding, 132 Ill. 23; Chapman *v.* Craig,

37 Mich. 370. Where it is an equitable title, the proceeds go to the heir of the equitable owner. Roup *v.* Bradner, 19 Hun 513.

The proceeds of the sale of land paid into court in the lifetime of the deceased go to his administrator as money (even where the owner was a monomaniac, but had not been declared to be insane). Smith *v.* Bayright, 7 Stew. (N. J.) 424. But where an infant's lands are sold, and the infant dies under the age of twenty-one, the proceeds retain their character as real property, Sweezy *v.* Thayer, 1 Duer 286; but become personal property on his attaining full age before his death. Forman *v.* Marsh, 11 N. Y. 544; Matter of Woodworth, 5 Dem. 156. Where lands limited in remainder are sold by order of court on application of the tenant for life and remainderman, the proceeds are personal property as to the remainderman and distributable as such after the death of the life tenant. Large's Appeal, 54 Pa. St. 383. See too, Bradway *v.* Holmes, 5 Dick. (N. J.) 311, where the sale was made to the life tenant under a testamentary power of sale.

But land which is received by the executor in payment of debts is assets, Beadle *v.* Steele, 86 Ala. 413; and may be sold without order of court. Williams *v.* Towl, 65 Mich. 204. So, land purchased by the personal representative on foreclosure of a mortgage belonging to the estate, Lockman *v.* Reilly, 95 N. Y. 64; Cook *v.* Ryan, 29 Hun 249. And, conversely, a surplus on foreclosure sale of the real property of the deceased belongs to the heirs as real property. Dunning *v.* Ocean National Bank, 61 N. Y. 497. And if it is adjudged to the personal representative as real assets for the payment of debts, it is not covered by the original administration bond, and the administrator should give a special bond before receiving it. Camden Mutual Insurance Association *v.* Jones, 8 C. E. Gr. 171. Where the administrator completes a contract of the deceased for the purchase of real property, he should not take title in himself, and if he does so, he will take as naked trustee for the heir, Wells *v.* Elliott, 68 Ala. 183; but his adverse possession under such a title will not be interfered with in behalf of the heirs after the lapse of twenty years. Davis *v.* Townsend, 45 Minn. 523. If United States public lands are entered by the deceased, and the title perfected by heir or devisee, they will not be subject to debts of the deceased, Coulson *v.* Wing, 42 Kan. 507; Coleman *v.* McCormick, 37 Minn. 179; Dawson *v.* Mayall, 45 Minn. 408; even when the claim is perfected by the administrator, and to reimburse the estate for moneys expended by him for that purpose. Rogers *v.* Clemmans, 26 Kan. 522.

The administrator has an insurable interest in buildings where personal property is insufficient to pay debts, and he may recover on the policy sufficient to pay the debts. Sheppard *v.* Peabody Insurance Co., 21 W. Va. 368. But he is not accountable for the value of buildings erected by the deceased on lands of his wife. Washburn *v.* Sproat, 16 Mass. 448. By statute in Indiana, the administrator may redeem the intestate's lands on foreclosure against the heirs, though not a party, Whisnand *v.* Small, 65 Ind. 120; but a compromise of the right in the interest of certain creditors will not bind other creditors who are not parties to it, Id.

The legal title to *partnership realty* descends like other real estate, subject, however, to the debts of the partnership. See Vol. I. p. 794, *ubi supra.* It is assets for the payment of such debts, although the legal title may be in the individual name of one partner. Paige *v.* Paige, 71 Ia. 318. In equity it is personalty, and if sold by the surviving partner for the payment of

partnership debts, the purchaser will take an equitable title. Walling *v.* Burgess, 122 Ind. 299. For purposes of distribution the surplus after the payment of partnership debts is personal property. Leaf's Appeal, 105 Pa. St. 505.

Exoneration—Primary fund. In the absence of statutory or testamentary provisions to the contrary the personal property is the primary fund for the payment of debts, and the land of the decedent can only be applied to that purpose when the personal property is insufficient. Smith *v.* Brown, 101 N. C. 347; Mason's Appeal, 89 Pa. St. 402; Hoffman *v.* Wilding, 85 Ill. 453; Young *v.* Wittenmyre, 22 Ill. Ap. 496; Scott *v.* Ware, 64 Ala. 174; Maybury *v.* Grady, 67 Ala. 147. So too, as to the payment of legacies, Perkins *v.* Caldwell, 79 N. C. 441; for which it is, in general, in the absence of a charge or other testamentary provision, the only available fund. Leigh *v.* Savidge, 1 McCart. 126; Stevens *v.* Flower, 19 Stew. (N. J.) 340; Bevan *v.* Cooper, 72 N. Y. 317; Heslop *v.* Galton, 71 Ill. 528; Evans *v.* Beaumont, 16 Lea 713 (including as personal property real property taken by the executor in payment of a debt due the estate). If there is not sufficient personal property, the legacies abate. Brands *v.* Hartung, 11 Stew. (N. J.) 42; Estate of Duvall, 146 Pa. St. 176; Heslop *v.* Galton, *ubi supra.* The failure to appoint an administrator will not raise a presumption that there is no personal property. Lovering *v.* King, 97 Ind. 130. If the personal property becomes insufficient by reason of a loss in the hands of the executor, the loss will fall upon the fund for the payment of legacies, and not upon the lands devised. Johnson *v.* Farrell, 64 N. C. 266. And if the executor unadvisedly distributes the personal property before payment of known debts, he cannot afterward be reimbursed out of the real property for such debts paid by him. Estate of Morony, 16 Phila. 302. The primary liability of the personal property cannot be changed by agreement between the creditor and the administrator, *e. g.*, to apportion the debt between the two funds. Mead *v.* Jenkins, 3 Dem. 551. And it will not be affected by the fact that the executor has given a mortgage to the legatee of the deceased creditor on cancellation, and in lieu, of his mortgage to the original creditor. Alexander *v.* Bacot, 14 Stew. (N. J.) 511. A court of equity will not aid a general creditor to reach devised lands, unless it is shown that the personal property is insufficient, and that legal remedies against the representative and his sureties have been exhausted. May *v.* Parham, 71 Ala. 253. In *Rhode Island* (1882 P. S. c. 189, § 1), while both real and personal property are charged with debts and expenses, the primary liability of the personal property remains unchanged.

In some states this primary liability of the personal property is abolished by statute, and the application of either species of property is left to the court in the case of debts, administration expenses, and family allowance, in *Alabama* (1886 Code, § 2078), and *California* (Code C. P. § 1516). Estate of Montgomery, 60 Cal. 645. So, as to debts and expenses, if for the interest of the estate, in *Connecticut* (1888 G. S. § 599) *Florida* (1892 R. S. § 1921), *Missouri* (1889 R. S. § 160); even though the will directs the debts to be paid out of the personal property. Overton *v.* Johnson, 17 Mo. 442.

Exoneration of mortgaged premises. At common law a debt of the decedent is entitled to be paid out of the personal property to the exoneration of lands mortgaged to secure it. Schouler on Exrs. § 430; Seibert's Appeal, 119 Pa. St. 525; Estate of Fish, 16 Phila. 373;

Dandridge *v.* Minge, 4 Rand. 397; Estate of Phinney, Myrick's Prob. 239. If both real and personal property are included in one mortgage, they are both liable *pro rata* for its payment. McLaren *v.* McLellan, 10 Pet. 625. The mortgaged premises have been held to be entitled to exoneration whether the mortgage was made by the deceased, Estate of Mason, 1 Pars. Eq. 129; Estate of Stuard, 17 Phila. 498; or not. Estate of Lennig, 52 Pa. St. 135; Byrne *v.* Hume, 84 Mich. 185. The mortgage must, however, represent or secure a valid liability of the deceased. Thus, the mortgage of a married woman securing her note may be valid as a mortgage, although the note is not entitled to payment as a debt out of her personalty to the exoneration of the mortgaged premises. Sawtelle's Appeal, 84 Pa. St. 306. So, if the note secured has not been duly presented as a claim against the estate. Clark *v.* Davis, 32 Mich. 154. But a devisee is not, in general, entitled to have the devised lands exonerated by the personal property from a mortgage not made by the deceased, but only assumed by him, Campbell *v.* Campbell, 3 Stew. (N. J.) 415; Mount *v.* Van Ness, 6 Id. 262; especially if it was only assumed to indemnify the grantor of the deceased. Estate of Hirst, 12 Phila. 106. And *a fortiori* where it was not assumed at all, but the land was merely taken with the incumbrance, McLenahan *v.* Johnson, 3 C. E. Gr. 101; Stiger *v.* Bent, 111 Ill. 328; Hirst's Appeal, 92 Pa. St. 491; even though the decedent had covenanted to pay the mortgage, Creesy *v.* Willis, 159 Mass. 249; or had afterward given his own mortgage to take up the existing mortgages. Pleasants *v.* Flood, 89 Va. 96. But see, *contra*, under these circumstances, Gould *v.* Winthrop, 5 R. I. 319. If, however, the executor pays off a mortgage assumed by his testator out of the personal property, a sole heir and next of kin (who is only benefited by the act) cannot object to the payment. Birkholm *v.* Wardell, 15 Stew. (N. J.) 337.

The right to have the land exonerated is personal to the devisee, and cannot be claimed by his grantee, Kruger *v.* Ferry, 14 Stew. (N. J.) 432; Keene *v.* Munn, 1 C. E. Gr. 398; or mortgagee. Moore *v.* Dunn, 92 N. C. 63. But it will not be lost in the case of an aged parent (the devisee) by his inadvertently allowing the executor to apply to the payment of the mortgage a pecuniary legacy to which he was also entitled. Byrne *v.* Hume, 84 Mich. 185.

New York statute. By statute in New York (1 R. S. 749, § 4), the mortgaged premises are the primary fund for the payment of the mortgage. So, Johnson *v.* Corbett, 11 Paige 265; Cumberland *v.* Codrington, 3 Johns. Ch. 229; Rauchfuss *v.* Rauchfuss, 2 Dem. 271; whether the decedent left a will or died intestate. House *v.* House, 10 Paige 158. And by the acceptance of the devise or inheritance the devisee or heir becomes personally liable for the payment of the mortgage. Hauselt *v.* Patterson, 51 Hun 321. The executor may, however, be directed to reserve funds to meet the case of anticipated deficiency on foreclosure. Williams *v.* Eaton, 3 Redf. 503. And where the mortgage is made to secure accommodation indorsements to be made by the decedent, his liability on such notes has been held to be a debt payable out of the personalty. Cochrane *v.* Hawver, 54 Hun 556. So, if the administrator sells the mortgaged land by order of the surrogate for the payment of debts, he may pay the mortgage out of the proceeds of the land. Stilwell *v.* Melrose, 15 Hun 378. So, if the testator mortgaged the land as collateral for A.'s debt, and A. afterward gave other collateral which was paid to the executor, it inures to the devisee's benefit, and must

be applied to discharge the mortgage. Fisher *v.* Fisher, 1 Bradf. 335.

Vendor's lien—Taxes, &c. Land subject to a vendor's lien should be exonerated by the personal property, Estate of McCracken, 29 Pa. St. 426; Chandler *v.* Chandler, 78 Ind. 417; O'Conner *v.* O'Conner, 88 Tenn. 76; especially where the entire personalty (amounting to more than the lien) together with half the realty and a special allowance were taken by the widow. Sutherland *v.* Harrison, 86 Ill. 363. So, in New York, it not being within the statute already cited as to payment of mortgages. Williams *v.* Kinney, 43 Hun 1; Lamport *v.* Beeman, 34 Barb. 239. So, where the land has not yet been conveyed to the deceased purchaser. Johnson *v.* Corbett, 11 Paige 265. But a devisee of unpatented land cannot call upon personal property for expenses incurred in completing the patent, if it was never liable for them. Keyzey's Case, 9 Serg. & R. 71. So, in Texas, where the statute only allows such payment for the benefit of the estate, the administrator cannot apply personal property to discharge a vendor's lien on the homestead. Mullins *v.* Yarborough, 44 Tex. 14.

In some states taxes on decedent's lands are a debt to be paid primarily out of his personal estate. Smith *v.* Cornell, 111 N. Y. 554; Pugh *v.* Russell, 27 Gratt. 789. So, in general, other debts secured by a lien on the land, Mason's Appeal, 89 Pa. St. 402; and such exoneration will be made for the benefit of the widow's statutory share in the real estate. Sparrow *v.* Kelso, 92 Ind. 514.

Exoneration by directions of will as to debts. Exoneration of property primarily liable for a debt or incumbrance will not be implied from the testator's language, unless such an intention clearly appears. Croswell on Exrs. § 711. It will not be implied by a residuary gift of the personal property after payment of the debts, followed by a devise of the real property for life, with a power of sale to the executor. Estate of Storey, 16 Phila. 238. Nor will the real property in remainder be burdened to exonerate the personal property because of the circumstance that the widow as life tenant of the estate needs the whole income for her maintenance. Sanderson *v.* Overman, 98 N. C. 235. A mere charge of the debts on a particular property is not sufficient, Smith *v.* Coup, 6 Dem. 45; Marsh *v.* Marsh, 10 B. Mon. 360; except to the extent of the property charged. Dicken *v.* Cotton, 2 D. & B. Eq. 272. So, *a fortiori*, a charge of the debts on the whole estate. Maybury *v.* Grady, 67 Ala. 147.

But a specific legacy of all the personal property exonerates the personal property and charges real estate not devised. Perry *v.* Hale, 44 N. H. 363. So, a specific bequest is entitled to be exonerated from incumbrances (*e. g.*, a pledge for a debt of testator). Johnson *v.* Goss, 128 Mass. 433. So, where the will directs a conversion of the lands into money, liens for taxes, etc., are payable primarily out of the proceeds, before specific bequests are applied. Matter of Curtis, 16 N. Y. Supp. 180. So, where real and personal property are devised to be sold, and after payment of testator's debts distributed, this will amount to a charge exonerating the general personalty in favor of pecuniary legacies, but not to relieve the residuary personalty. Palmer *v.* Armstrong, 2 Dev. Eq. 268. So, where lands are devised after a decree is made for their sale to equalize distribution among the children, they are entitled to exoneration by payment of the decree out of other property. Carlisle *v.* Green (Ky.), 19 S. W. Rep. 925. So, where certain land is devised

to executors to sell and pay debts, and is afterward sold by the testator and other lands purchased by him, the debts are payable out of the after-acquired real property, and personal property bequeathed to the wife is exonerated. Lee's Appeal, 18 Pick. 285. So, the wife's third is exonerated where the will gave one-third of the personal property to the wife and two-thirds to the sons "after deducting" the wife's share and debts. Bardwell *v.* Bardwell, 10 Pick. 18.

But there is no exoneration of the general personalty where the will directs debts to be paid if possible without sale of the farm stock, and certain real property to be sold and proceeds divided after payment of debts. Seaver *v.* Lewis, 14 Mass. 83. So, after a direction to pay debts a bequest to the wife of all the personalty, and a pecuniary legacy out of the real property, and a direction to sell and pay "the balance" to A., does not charge the land or exonerate the personalty from the debts. Miller *v.* Cooch, 5 Del. Ch. 161. So, a direction that there should be no division until debts paid from "the general revenues of my estate" (*i. e.*, rents chiefly), followed by a direction to sell certain personal property and apply the proceeds to the debts, with a specific devise of the rents, leaves the proceeds of the personal property the primary fund for the debts. Whitehead *v.* Gibbons, 2 Stock. 230.

A life tenant may be relieved from liability for current interest and taxes by the provisions of the will. Estate of Daly, 15 Phila. 548. But in the absence of such provisions an executor who is also tenant for life cannot pay such current charges out of the principal of the estate. Estate of Jewell, 11 Phila. 73. If, on the other hand, the will directs the payment of improvements on land out of the proceeds of sale of a certain parcel, and they are paid out of the rents of the whole property, the devisee of the land is entitled to be reimbursed out of the particular parcel. Watkins *v.* Jenkins, 74 Iowa 749. And if personal property which is charged with the debts is wasted by distribution without paying a debt of the deceased as surety for a principal who was supposed good, recourse must be had to the executor's sureties before the decedent's realty. Edmunds *v.* Scott, 78 Va. 720.

Direction as to incumbrances. Irrespective of the testator's personal liability, the terms of the will may make a mortgage payable out of his personalty, Waldron *v.* Waldron, 4 Bradf. 114; Estate of Kirk, 13 Phila. 276; Alexander *v.* Powell, 8 Dem. 152; Andrews *v.* Bishop, 5 Allen 490; or the general scheme of the will may raise a necessary implication to that effect; Towle *v.* Swasey, 106 Mass. 100; or to the contrary effect. Thompson *v.* Thompson, 4 O. St. 333.

In the case of a will the right of mortgaged lands to exoneration is generally confined to the residuary personalty, and legacies will not abate for such debts. "In such event the doctrine has been long established that, after the application of the general residue of the estate, the land thus encumbered must solely bear the burden." Beasley, M. C. C., in Thomas *v.* Thomas, 2 C. E. Gr. 356. So, in the case of specific legacies. Estate of Mason, 1 Pars. Eq. 129. And mortgaged lands devised by the testator cannot call on other devisees for contributions to pay off the mortgage. Gibson *v.* McCormick, 10 Gill & J. 65; McGuire *v.* Brown, 41 Ia. 650. In these cases the other testamentary provisions, being of equal weight, are themselves evidence of the testator's intention to the extent of the real or personal property necessary to carry

them out. But a mortgage given by the testator on after-acquired lands (descended to the heir) must be paid as a debt out of the testator's other lands, which he gave "to his executor until his debts were paid." Ford *v.* Gaither, 2 Rich. Eq. 270.

A mortgage on land, to which the title was always in his wife's name, may be exonerated by a direction to pay the mortgage, if the title remained in the testator at his death. Sutherland *v.* Clark, 61 How. Pr. 310. For a similar construction of a testamentary reference to "insurance money coming to my estate," when the insurance was in his wife's name, see Fort *v.* Edwards, 5 Stew. (N. J.) 641. An express direction to pay a mortgage out of the personal property will not be defeated by the fact that the testator afterward conveyed the property to the devisee subject to the mortgage. Bradford *v.* Forbes, 9 Allen 365. And if several parcels are devised, the right of all to exoneration will not be defeated by an express direction to pay off the incumbrances on some of them. Richardson *v.* Hall, 124 Mass. 228. A mortgage which has been assumed by the testator will be payable out of his personal property under a general direction to pay debts, Hoff's Appeal, 24 Pa. St. 200; or out of testator's business, specifically bequeathed after payment of his debts, "which are to be paid from said business." Bishop *v.* Howarth, 59 Conn. 455. But in New York, when debts are charged on the real estate with a power of sale, a mortgage on one parcel is not entitled to be paid out of the proceeds of other lands sold by the executor for debts. Van Vechten *v.* Keator, 63 N. Y. 52. And if an executor pays a mortgage which the testator had never assumed out of the general estate under an authority to sell and convert the residuary real and personal property and divide, he may be reimbursed out of the proceeds of a sale of the mortgaged premises made long afterward. Matter of Gray, 27 Hun 455. If the direction is to pay the debts out of his "estate," the executor may resort to either fund, Hewes *v.* Dehon, 3 Gray 205; the real estate being all liable *pro rata*, if the personal estate proves insufficient. Searles *v.* Brace, 19 Abb. N. C. 10. Devised lands are entitled to be exonerated from a mortgage made by the testator under a residuary bequest of the personal property after payment of debts. Plimpton *v.* Fuller, 11 Allen 189. So, lands descended under a provision constituting the personal property a fund for the payment of debts, and directing that the legacies abate, if necessary. Mollan *v.* Griffith, 3 Paige 402.

Direction as to legacies. To exonerate the personal property, and charge the real property with the payment of legacies, the intention must be clear. Kalbfleisch *v.* Kalbfleisch, 67 N. Y. 354; Van Winkle *v.* Van Houten, 2 Gr. Ch. 172. Such intention has been implied where legacies were to be paid after the death of the wife, and the testator devised to her all his real property for life and all his personal property absolutely, Cleary's Appeal, 35 Pa. St. 54; but not where all the estate was devised to the wife for life, and the real property in remainder to two of the sons, with direction to pay legacies, and the remainder in the personal property was undisposed of. Hoes *v.* Van Hoesen, 1 N. Y. 120.

A charge of legacies on the land does not of itself exonerate the personal property as the primary fund for their payment. Kelsey *v.* Western, 2 N. Y. 500; Whitehead *v.* Gibbons, 2 Stock. 230; Sims *v.* Sims, Id. 158; Norris *v.* Farrell, 11 Phila. 271; United States *v.* Parker, 2 MacArth. 444; Devereux *v.* Devereux, 81 N. C. 12. So, the charge

of the support of a daughter on the whole estate, Leavitt *v.* Wooster, 14 N. H. 550; even though the devisee is "to pay" the legacies. Tole *v.* Hardy, 6 Cow. 333. See, however, as to the effect of explicit directions as to the payment of an annuity, Wyckoff *v.* Wyckoff, 3 Dick. (N. J.) 113. On the other hand, where the land is liable for the payment of legacies, it will not be discharged by an express direction to pay them out of the personalty, if the personal property is insufficient. Wilcox *v.* Wilcox, 13 Allen 252.

Express charge of debts—Direction to pay—After payment. An express charge of debts on the lands of the testator is not created by a testamentary direction to the executor to pay the testator's debts, Shreve *v.* Shreve, 2 C. E. Gr. 487; Harmon *v.* Smith, 38 Fed. Rep. 482; notwithstanding a devise of land to the executor as an individual. Langstroth *v.* Golding, 14 Stew. (N. J.) 49. So, even a direction to pay the debts "out of my estate," Gaw *v.* Huffman, 12 Gratt. 628; although this has been held, in Missouri, to raise an implied charge, and to render the real and personal property liable *pro rata* for the debts. Will of Brant, 40 Mo. 266. So, a direction that all debts be paid as soon as practicable has been held not to be a charge. Lewis *v.* Ford, 67 Ala. 143. On the other hand, a devise of land, with a direction that the devisee pay debts, charges the debts on the land devised. Buckley *v.* Buckley, 11 Barb. 43; Markillie *v.* Ragland, 77 Ill. 98. But not a general residuary gift and power of sale for distribution after a direction to pay debts, Matter of Bingham, 127 N. Y. 296; nor a general residuary gift blending the real and personal property after such direction to pay debts (the personal property being sufficient for the debts). Hanson *v.* Hanson, 70 Me. 511.

A devise of land after payment of debts charges the debts on the land devised. Tuohy *v.* Martin, 2 MacArth. 572; White *v.* Kane. 1 How. Pr. N. S. 382; Smith *v.* Coup, 6 Dem. 45. So, a devise after payment of debts with power of sale to carry out the will. Matter of Rosenfield, 5 Dem. 251. As to the effect of such provisions as a charge of debts to take them out of the Statute of Limitations, see Starke *v.* Wilson, 65 Ala. 576; Lewis *v.* Ford, 67 Ala. 143. But there is no charge where the direction is separate from and independent of the devise, *e. g.*, where the devise was unconditional and the direction to pay debts was found in a subsequent codicil. Letson *v.* Letson, 2 C. E. Gr. 103. So, in the case of a specific devise of land to the wife, and also all the personal property "after payment of debts therefrom" (although the personal property was insufficient), Adams *v.* Brackett, 5 Met. 280; or of a specific devise of land, followed by a residuary bequest of the personal property to the same person after payment of debts, Smith *v.* Atherton, 54 Hun 172; or where the will provided: "I give as follows," and then made a devise of lands and a bequest of "any money remaining," Decker *v.* Decker, 121 Ill. 341; or gave the residuary realty and personalty blended in shares after payment of debts with a power of sale to the executor (who was one of the residuary legatees), the personal property being insufficient at testator's death. Matter of Rochester, 110 N. Y. 159. In this case the court ordered a sale of the lands for the payment of debts. But a devise after payment of debts was construed to be a charge, as ground for refusing such order of sale in Matter of Hesdras, 20 N. Y. Supp. 79; S. C. 2 Connoly 514.

Express charge of legacies—Direction to pay—After payment. An express charge of a legacy on the land is effected by a general direction to the

executor to pay the legacy out of the estate, Cox *v.* Corkendall, 2 Beas. 138; or "out of the balance of my estate." Roman Catholic German Church *v.* Wachter, 42 Barb. 43. But not if the word "estate" is used throughout the will to designate personal property only. Worth *v.* Worth, 95 N. C. 239. So, an annuity is charged by a direction that it be paid out of the rents of an ore bed. Estate of Brotzman, 133 Pa. St. 478.

And a legacy is charged on a specific devise by a direction to the devisee to pay it. Loder *v.* Hatfield, 71 N. Y. 92; Brown *v.* Knapp, 79 N. Y. 136; Kelsey *v.* Deyo, 3 Cow. 133; Tole *v.* Hardy, 6 Cow. 333; Thayer *v.* Finnegan, 134 Mass. 62; Dudgeon *v.* Dudgeon, 87 Mo. 218; Farra *v.* Adams, 12 Bush 515. So, where the residuary real and personal property is given with such direction, Harris *v.* Fly, 7 Paige 422; or where a legacy is to be paid out of the proceeds of certain land devised. Van Giessen *v.* Bridgeford, 83 N. Y. 349. So, where the devisee is an executor and is directed to manage the entire estate and to pay a certain legacy, Carter *v.* Worrell, 96 N. C. 358, although a similar legacy was expressly charged on a similar devise to another son. So, where the devisee is directed to pay an annuity, Merrill *v.* Bickford, 65 Me. 118; Wyckoff *v.* Wyckoff, 3 Dick. (N. J.) 113; S. C. 4 Id. 344, although the personal property is sufficient; or to pay an annuity out of the interest, Bailey *v.* Bailey, 115 Ill. 551; or to support A., Cady *v.* Cady, 67 Miss. 425; or to provide for an imbecile child, Huhlein *v.* Huhlein, 87 Ky. 247; or for minor children, Brandow *v.* Brandow, 66 N. Y. 401; or where in a devise it is provided that the wife have a home and support, Estate of Goodrich, 38 Wis. 492; or "be entitled to a living off my land." Commons *v.* Commons, 115 Ind. 162. So, where the testator expresses the "desire" that the devisee pay what is necessary and desirable to keep A. from want, Ward *v.* Ward, 16 Abb. N. C. 253; or devises his estate to his wife and daughter, the daughter "to receive a thorough education" over and above her share. Hill *v.* Jones, 65 Ala. 214.

If, however, the direction to the devisee to pay a legacy is separate from, and independent of, the devise, it will be a personal charge merely, and not a charge on the land devised, Miltenberger *v.* Schlegel, 7 Pa. St. 241; Van Vliet's Appeal, 102 Pa. St. 574; Cable's Appeal, 91 Pa. St. 527; Walter's Appeal, 95 Pa. St. 305; Sistrunk *v.* Ware, 67 Ala. 373. So too, an independent direction that the devisee pay an annuity, Owens *v.* Claytor, 56 Md. 129; or support A. Hart *v.* Hart, 81 Ga. 785; Haworth's Appeal, 105 Pa. St. 362; South Mahoning Tp. *v.* Marshall, 138 Pa. St. 570. And a legacy will not be charged on land devised by a direction to pay it "out of my estate," followed by a residuary devise blending the real and personal property. White *v.* Kaufman, 66 Md. 89; or by a direction that the son pay the legacy after a devise in trust for him and his family, Cissell *v.* Cashell, 76 Md. 330; nor, in general, where there is clearly an intention to leave the payment to the honor of the devisee. Larkin *v.* Larkin, 17 R. I. 461. So, where the will provides that each of several devisees shall bear his share of certain legacies by bond or otherwise. Kirkpatrick *v.* Chesnut, 5 S. C. 216.

Express charge—subject to, or on condition of, payment. An express charge upon land specifically devised is created by making the devise subject to the payment of the legacy, Devereux *v.* Devereux, 78 N. C. 386; Porter *v.* Jackson, 95 Ind. 210; Scott *v.* Patchin, 54 Vt. 253; or annuity, Waln *v.* Emly, 11 C. E. Gr. 243; Johnson *v.* Cornwall, 26 Hun 499; or to the support of

Wallace, 114 Ind. 169; although even where the personal property was sufficient at the date of the will and at testator's death, the blended residuary clause will raise an implied charge of legacies on the residuary real estate. Scott *v.* Stebbins, 91 N. Y. 605. See, however, *contra*, Vanderhoof *v.* Lane, 17 N. Y. Supp. 712; and before the act of 1858, Laurens *v.* Read, 14 Rich. Eq. 245. So, where the personal property was sufficient at the date of the will and became worthless before the codicil, and there was a power of sale in the codicil. Hoyt *v.* Hoyt, 85 N. Y. 142. Parol evidence is admissible to show that the personal property was insufficient for the legacies, Leigh *v.* Savidge, 1 McCart. 126; Dey *v.* Dey, 4 C. E. Gr. 137; but see, *contra*, Heslop *v.* Galton, 71 Ill. 528. And it makes no difference that the residuary gift is made in trust for the beneficiaries, Estate of Markley, 148 Pa. St. 538; or that the residuary devisees are testator's heirs, and take as such and not as devisees. Matter of Root, 81 Wis. 263.

But legacies will not be charged on testator's land by a void gift of the blended residuary real and personal property to a charity, Estate of Hanbest, 11 Phila. 10; nor, in general, by a valid residuary bequest of the real and personal property, if other legacies in the will are expressly charged, Johnson *v.* Poulson, 5 Stew. (N. J.) 390, revg. Poulson *v.* Johnson, 2 Id. 529; nor if the legacies are made expressly payable out of the personal property, Smith *v.* Mason, 89 Va. 713; nor if there is an express direction to pay debts out of the personal property, and the legatees are strangers in blood, and the residue is bequeathed to testator's wife and children, Bevan *v.* Cooper, 72 N. Y. 317; nor where the legacies were to grandchildren, followed by a gift of the residuary real and personal property "not disposed of" to a daughter, and the personal property was more than the real property, and then sufficient for all the legacies. Myers *v.* Eddy, 47 Barb. 264. So, where the legacy was to a charity, and the residue was bequeathed to testator's children, and the legacy was payable out of a trust fund which proved insufficient after payment of testator's debts. Johnson *v.* Home for Aged Men, 152 Mass. 89. So, where the personal property was ample at testator's death, and the residue was bequeathed to persons (not relatives) who had been members of testator's family for many years, Brill *v.* Wright, 112 N. Y. 129; or where the personal property was ample at testator's death, and the legacy was a trust to invest for the benefit of a son for life with a remainder to a daughter, and the residue was given to the daughter, Wiltsie *v.* Shaw, 100 N. Y. 191; or where the personal property was sufficient at the time of making the will, and became insufficient before the testator's death by reason of his conversion of it into realty, the legacies being to daughters and the residuary bequest to his sons, Gridley *v.* Andrews, 8 Conn. 1; or the legacies being to his nephews and the residuary bequest to his daughters. Schnorr *v.* Schroeder, 45 Hun 148. So, where the residuary bequest is of the real and personal property "not already devised and bequeathed," Lupton *v.* Lupton, 2 Johns. Ch. 614; or "not before disposed of," Spillane *v.* Duryea, 51 How. Pr. 260: coupled with the fact of the sufficiency of the personal property at the time of making the will. Johnson *v.* Farrell, 64 N. C. 266. So, the legacies are not charged, where the residue was disposed of by separate gifts of the real and personal property to the same person not blended in one residuary bequest. Van Vliet's Appeal, 102 Pa. St. 574.

In general, debts may be readily enforced against the realty, and it is the

duty of the personal representative to see that this is done where necessary. A charge of debts is therefore not implied, although the real and personal property are blended in the residuary clause after a direction to pay the debts, Hanson *v.* Hanson, 70 Me. 511 (see, however, *contra*, Maybury *v.* Grady, 67 Ala. 147); and although the executor had a testamentary power of sale. Matter of Rochester, 110 N. Y. 159; Matter of Bingham, 127 N. Y. 296.

Implied charge—Other provisions and circumstances. In general, if a charge of lands is not expressed, it must be clearly implied, whether for debts, Matter of City of Rochester, 110 N. Y. 159; Seaver *v.* Lewis, 14 Mass. 83; or legacies. Van Winkle *v.* Van Houten, 2 Gr. Ch. 172; Lee *v.* Lee, 88 Va. 805; McLoughlin *v.* McLoughlin, 30 Barb. 459. A legacy is charged on the land by implication, where the real property is to be divided into certain pecuniary legacies, and a power of sale is given to the executors, Gibbens *v.* Curtis, 8 Gray 392; or where there is a direction to convert the real property and use the proceeds for certain purposes including a legacy, American Dramatic Fund Association *v.* Lett, 15 Stew. (N. J.) 42; or where the legacy is in lieu of dower, and all the real and personal property is to be sold and distributed "after discharging all charges and lawful claims upon the same," Snyder *v.* Warbasse, 8 Stock. 463; or where the legacy is to the wife, and the executors are authorized to pay it "before any of the other legacies are paid," and are directed to sell the real property, Le Fevre *v.* Toole, 84 N. Y. 95; or where there is a direction to sell, and out of the proceeds pay "first" the debts of the deceased, and the personal property is insufficient for the legacies, Smith *v.* First Church, 11 C. E. Gr. 132; or where the legacy is to a son with "priority" over the devise to the widow, Moore's Appeal, 84 Mich. 474; or is "to be secured as by bond and mortgage" on certain real property. Union Methodist &c. Church *v.* Wilkinson, 9 Stew. (N. J.) 141. So, where there is no personal property and the will gives the executors power of sale of land, Hoyt *v.* Hoyt, 85 N. Y. 142; or where there is a general power of sale "for the benefit of my legatees," and the testator must have known the insufficiency of his personal property. Brink *v.* Masterson, 4 Dem. 524; or where the legacies are sufficient to take all the real and personal property, and the land is not disposed of, Leigh *v.* Savidge, 1 McCart. 126; or all the personal property is otherwise specifically disposed of. Parks *v.* Aldridge, 8 Fed. Rep. 220. So, the expenses of carrying on testator's business are charged on his land, where there is a direction to continue the business with a power to sell real and personal property, "or make such other disposition of it as the safe conduct of such business shall seem to require." Willis *v.* Sharp, 113 N. Y. 586. So, a charge will be implied from a direction to erect and maintain a monument, "intending to devise to him" a certain farm, followed by such devise, Le Rougetel *v.* Mann, 63 N. H. 472; or from a devise of all testator's real and personal property "except as hereinafter mentioned," followed by pecuniary legacies, Hart *v.* Williams, 77 N. C. 426; or a devise of all the real and personal property to sons "subject to the limitations" afterward set forth, and "I leave it to them to make proper provision for their sister," and "direction" that a grandson be educated at the expense of the estate. Cockerill *v.* Armstrong, 31 Ark. 580.

But a charge will not be implied because the legacy is in lieu of dower, Paxson *v.* Potts, 2 Gr. Ch. 313; Boykin *v.* Boykin. 21 S. C. 513; or because an annuity is given to the testator's mother

for her support with a provision that she should remain for life with his wife, Martin *v.* Goode, 111 N. C. 288; or from the fact that the real property was not disposed of, and there was a direction in the will that all excess or deficiency should fall on the legatees *pro rata* (the personal property being more than sufficient for the legacies), Bragaw *v.* Bolles, 6 Dick. (N. J.) 84; nor where the legacies were payable in installments, and after the last payment became due all the personal property was given to the children with a specific devise to one of them, Read *v.* Cather, 18 W. Va. 268; nor where the legatee was of testator's blood, and the personal property was known to be insufficient (although that may be evidence going to show such intention), Turner *v.* Gibb (N. J.), 22 Atl. Rep. 580; nor because the personal property was insufficient to the testator's knowledge, and he required his executors "to carry out the provisions of the will," Taylor *v.* Tolen, 11 Stew. (N. J.) 91; nor from a direction that certain legacies be "first" paid after debts, the testator having at that time ample personal property for all the legacies. Arnold *v.* Dean, 61 Tex. 249. So, where a legacy of five dollars is given to one child "in full of her share," and the personal property is not disposed of, and devises of land are made to the others at a valuation, such sums will not be charged on the real property as so much money to be distributed as intestate personalty. Knaub's Appeal, 144 Pa. St. 322.

Debts and legacies—What included. A charge of testator's debts will include the testator's liability as husband on an antenuptial contract, Warner *v.* Warner, 18 Abb. N. C. 151; or his liability as a surety. Berg *v.* Radcliff, 6 Johns. Ch. 302. So, a charge of all debts "whether on bond and mortgage or otherwise" includes testator's mortgages on lands conveyed by him to his children by deeds taking effect at testator's death. Waldron *v.* Waldron, 4 Bradf. 114. But parol evidence is not admissible to show that the testator's intention was to include legacies in a charge of debts. McCampbell *v.* McCampbell, 5 Litt. 92. And a charge of debts will not include a debt which was satisfied by a legacy to the debtor. Ward *v.* Coffield, 1 Dev. Eq. 108.

A charge of legacies generally includes annuities. Heatherington *v.* Lewenberg, 61 Miss. 372; Nash *v.* Taylor, 83 Ind. 347.

What property charged. Where all of the testator's property is clearly charged, all parcels must bear the burden in proportion to the value of each piece, Elliott *v.* Carter, 9 Gratt. 541; although the debt charged is a mortgage on a particular parcel. Searles *v.* Brace, 19 Abb. N. C. 10. A bequest of one-half of the residue to a sister, and half of the remainder to a nephew, and "all the rest of my property after payment of debts and legacies" to heirs of a deceased brother, has been held to create a charge of debts and legacies on all the residue equally (the single share of the brother's heirs being much too small to satisfy them). Wallace *v.* Wallace, 23 N. H. 155.

But where the language is specific, the charge will be confined to the particular property indicated, *e. g.*, to the residuary personalty where a specific devise was followed by a residuary gift of the personal property after payment of debts, Adams *v.* Brackett, 5 Met. 280; Smith *v.* Atherton, 54 Hun 172; or where both specific devise and residuary personal property followed the words "after payment of my debts I give and bequeath as follows," Decker *v.* Decker, 121 Ill. 341; or to the residuary realty (and not that devised) in a specific devise to the executor individually, followed by a residuary gift after payment of legacies, Newsom

v. Thornton, 82 Ala. 402; or in a specific devise "with all remainders and excess after payment of legacies." Glass *v.* Dunn, 17 O. St. 413. So, where testator "bequeaths" two pieces of land to his wife, followed by "this bequest is subject to" a certain legacy, the charge is confined to the latter devise. Carroll *v.* Botsai, 65 Miss. 350. If the testator has only an undivided interest in a piece of land, his charge of a legacy on the land in question will be a charge on his interest in it. Toney *v.* Spragins, 80 Ala. 541. But where there is a direction to pay debts, and legacies are charged on real property, if there is "not cash enough," personalty otherwise exempt from debts, such as pension money, is made subject to debts for the relief of the legacies. Matter of Kennedy, 1 Connoly 181. But if real and personal property are given to a wife for life with remainder to the sons, a legacy charged on the property "bequeathed" them will not include the real property. Ogle *v.* Tayloe, 49 Md. 158.

A charge in general terms on the testator's real property will not include lands specifically devised, Kitchell *v.* Young, 1 Dick. (N. J.) 506; Davenport *v.* Sargent, 63 N. H. 538; especially a devise of the homestead to the widow in lieu of dower. Fretmore *v.* Peck, 66 How. Pr. 54. If in terms it includes all the real property, that which is not disposed of will be primarily liable. Stires *v.* Stires, 1 Halst. Ch. 224. So, a direction that debts be paid out of the first moneys that come to the executor's hands does not charge a specific legacy of notes, &c. in exoneration of realty which is not disposed of. Douglass *v.* Rader, 15 Lea 651. For a testamentary provision shifting the charge of a legacy in a certain contingency from one piece of property to another, see Albright *v.* Albright, 128 Pa. St. 381. And the charge of a legacy on a lease of certain land, "and no other part of my estate," has been held to include a new lease of the same land after the first lease had been annulled. Shupp *v.* Gaylor, 103 Pa. St. 319.

Principal and income. Where legacies are charged on lands, the charge will include the rents if necessary, as well as the proceeds of sale, Pond *v.* Allen, 15 R. I. 171; especially where there is a direction to sell the land, if the personal property prove insufficient for the payment of the legacies. Lyon *v.* Church of the Redeemer, 14 Stew. (N. J.) 389. But if the executor is merely authorized to sell, until he makes sale the rents belong to the devisee. Brooks *v.* Jackson, 125 Mass. 307. So, under a power of sale for debts. Clift *v.* Moses, 116 N. Y. 144. So, Bucher *v.* Bucher, 86 Ill. 377, although the devisee is executrix (it not being incumbent on her to sell until the personal property is exhausted).

An express charge of the widow's support on a farm devised to the son for life, "and the proceeds and avails," will include the current profits or rents. Walker *v.* Downer, 55 Hun 75. And where the residuary real and personal property is given to constitute a fund for the support of the daughter, it will be a charge on principal and income, and the principal may be taken, if necessary. Bierce *v.* Bierce, 41 O. St. 241. But where the estate is given to the wife and daughter with a provision for the daughter "to receive a thorough education" over and above her share, such charge will be payable first out of the net rents. Hill *v.* Jones, 65 Ala. 214. So, where "a living off of my land" is given to the wife. Commons *v.* Commons, 115 Ind. 162. In North Carolina, however, it is held that a devise to A., the widow to "have support *out of the land,*" charges only the rents and profits, and not the land nor the person of the devisee. Gray *v.* West, 93 N.

C. 442; Misenheimer *v.* Sifford, 94 N. C. 592.

If a legacy is made payable out of the "net profits" of a plantation, it will be confined to the income, Taylor *v.* Harwell, 65 Ala. 1; or if the real and personal property are bequeathed to the wife for life, "she to provide" a home, maintenance, and annuity for A. (the devisee having no greater estate), Jackson *v.* Atwater, 19 Hun 627; Brandow *v.* Brandow, 66 N. Y. 401; and a direction to pay debts does not enlarge to a fee an estate devised for life or widowhood. Giles *v.* Little, 104 U. S. 291. And where the net income of land is given with power in the executor to apply the income, and, if necessary, sell the land for debts and legacies, the income will be charged with the debts and legacies, although accepted in lieu of dower. Kline's Appeal, 117 Pa. St. 189.

A devise to B., and an annuity bequeathed to A., "out of the rents" charges the rents only. Nudd *v.* Powers, 136 Mass. 273. But where an annuity and legacies are given, and power is given to the executor to dispose of the property and invest the proceeds so as to provide sufficient income for the payment of legacies, the annuity will not be confined to the income, but the principal will be applied, if needed, to its payment. Addition *v.* Smith, 83 Me. 551. As to funds applicable to the payment of annuities, see Vol. II. p. 662, n.

Legacy charged—When payable. If a legacy is charged on a devise in remainder, it will be payable when the remainder takes effect. Perry *v.* Hale, 44 N. H. 303; Spence *v.* Robins, 6 Gill & J. 507. If it is charged on a fund, and payable "when it shall be convenient" to executors, it will be due when there are sufficient funds in hand. Van Rensselaer *v.* Van Rensselaer, 113 N. Y. 207. If the testator devises to his son lands "I lately bought at the same price and on the same terms," but without interest, and bequeaths to other children the excess of such value over and above the devisee's share, and the testator had given a purchase money mortgage payable in installments with interest, the payments by the devisee will fall due without interest to correspond with the installments. Enders *v.* Enders, 49 Mich. 182. But if a legacy is charged, with a future time for payment, and interest *until it is payable*, after a long default in interest and on other incumbrances a court of equity may order sale and investment of the proceeds for the legatee. Woodward *v.* Woodward, 1 Stew. (N. J.) 119. In general, however, and in the absence of testamentary directions, the legacies charged on land are payable like other legacies at the end of one year, Butler *v.* Johnson, 41 Hun 206; see too, Vol. II. p. 709, *ubi supra;* and will be presumed to be paid after the lapse of forty years. Grimes *v.* Smith, 70 Tex. 217. But see, *contra*, after twenty-four years, Quackenbush *v.* Quackenbush, 42 Hun 329. And to the effect that the Statute of Limitations does not run against a legacy charged on land, see Shannon *v.* Howell, 36 Hun 47; Loder *v.* Hatfield, 71 N. Y. 92.

Enforcement of charge against land. A charge of legacies or debts on land should be enforced by the legatee or creditor, and not by the executor. Dill *v.* Wisner, 23 Hun 123. So, as to an annuity. Robinson *v.* McIver, 63 N. C. 645. But the executor may enforce a charge on the lands devised for burial expenses. Cool *v.* Higgins, 8 C. E. Gr. 308. So too, to reimburse himself for advances on an annuity charged (even after the death of the annuitant). Allport *v.* Jerrett, 41 N. Y. S. R. 32. And in Indiana, he may sell by order of the court for debts and legacies, although the legacies are

charged on the land. American Coal Co. *v.* Clemens, 132 Ind. 163. In Pennsylvania, a legacy charged may be enforced in the Probate Court. Eyre's Appeal, 106 Pa. St. 184. And in *New Jersey* there is a statutory provision for the setting apart of lands by commissioners appointed by the Probate Court to secure the payment of a contingent legacy made chargeable on the testator's lands (1877 Rev. 582).

In general, a charge should be enforced by a bill in equity for sale of the lands charged. Tuohy *v.* Martin, 2 MacArth. 572; Rennie *v.* Crombie, 1 Beas. 457; Merritt *v.* Bucknam, 78 Me. 504; George *v.* McMullin, 3 Del. Ch. 269; Pearcy *v.* Greenwell, 80 Ky. 616; Mathewson *v.* Arnold, 12 R. I. 145; Lofton *v.* Moore, 83 Ind. 112. And where the "support" of the widow is charged on lands devised, the court may on bill in equity fix the amount of a proper annuity and direct the devisee's heirs to pay, or the land to be sold in default of payment. Rhoades *v.* Rhoades, 88 Ill. 139. And a court of equity may enforce a testamentary charge, notwithstanding fraudulent and collusive disallowance of the will in the Probate Court. Wetherbee *v.* Chase, 57 Vt. 347.

Legacies charged on lands devised should be enforced against the land, and not by action against the executor. Cann *v.* Fidler, 62 Ind. 116; Frampton *v.* Blume, 129 Mass. 152. And the executor is not liable for a legacy charged on a specific bequest after delivery of the property bequeathed. Hines *v.* Hines, 95 N. C. 482. A judgment, however, against the executor and his sureties does not bar proceedings against the real property charged. Reynolds *v.* Bond, 83 Ind. 36.

Under a general charge the personal property should be first exhausted. Mathewson *v.* Arnold, 12 R. I. 145. But this is not necessary in the case of a specific devise, under which the devisee has by his acceptance of the devise become personally liable. Lofton *v.* Moore, 83 Ind. 112. And, on the other hand, where the lands are charged, the residuary real estate must be exhausted before recourse is had to the personalty required for the payment of legacies. Watts *v.* Watts, 38 O. St. 480. Under a direction to pay a debt and legacies out of the proceeds of land the debts are entitled to be first paid. Matter of Hopkins, 57 Hun 9. And this is true even of a direction that a devisee pay $500 to the executor for legacies, if the fund is required for debts. Smith *v.* Carroll, 112 Pa. St. 390.

Where the residuary devise is charged, the title vests in the devisee subject to the charge. Chapman *v.* Craig, 37 Mich. 370. If the estate charged is a reversion, the court may order it to be sold. Matter of Root, 81 Wis. 263. But if the land is devised in tail subject to a charge, the entire fee will be sold. Gause *v.* Wiley, 4 Serg. & R. 509.

Purchase from devisee. Where the legacy is charged on land devised, the devisee's grantees take the land subject to the charge. Bartholomew *v.* Merriam, 55 Hun 280; Taft *v.* Morse, 4 Met. 523; Farra *v.* Adams, 12 Bush 515; Moore's Appeal, 84 Mich. 474; Scott *v.* Patchin, 54 Vt. 253. So, a devise conditioned on the support of a third person, Meakin *v.* Duvall, 43 Md. 372; or for his support, Stillwell *v.* Leavy, 84 Ky. 379. And the charge is superior to the grantee's claim for improvements made by him. Bennett *v.* Akin, 38 Hun 251.

So, a mortgagee of the devisee will take subject to an annuity charged, Waln *v.* Emly, 11 C. E. Gr. 243; Perkins *v.* Emory, 55 Md. 27; and will be liable for its payment while he is in possession under foreclosure. Felch *v.* Taylor, 13 Pick. 133. In like manner,

where the devise is to the wife in trust for the support of her children, she cannot encumber the land for her own debts, Rountree *v.* Dixon, 105 N. C. 350; and a mortgagee of the devisee takes subject to the testator's debts. McCullough *v.* Copeland, 40 O. St. 330; Shaw *v.* Barksdale, 25 S. C. 204.

So, the devisee's creditors are subordinated to a legacy charged on the devise, Estate of Laughlin, 131 Pa. St. 333; or a charge of the support of a third person. Cockerill *v.* Dale, 33 Gratt. 45.

But where there is a general charge of legacies, the devisee's grantee is only subject to the burden after the legatee has exhausted his remedy against the personal property, Kelsey *v.* Western, 2 N. Y. 500; and against the devisee personally, Id.; Dodge *v.* Manning, 1 N. Y. 298; and he may require the legatee to resort first to the devisee personally. Perry *v.* Hale, 44 N. H. 363. And a grantee's liability cannot exceed the amount of property conveyed to him or rents received by him. Hill *v.* Jones, 65 Ala. 214. Where the testator's debts are charged generally on the real estate, a *bona fide* purchaser from the devisee after the time has expired for proceeding against the real estate will take the land discharged from the debts, White *v.* Kane, 51 N. Y. Super. Ct. 295; S. C. 1 How. Pr. N. S. 382; although the will directed distribution after the debts are paid, Smith *v.* Soper, 32 Hun 46; and he need not inquire as to the application of the purchase money. White *v.* Kane, *ubi supra;* Andrews *v.* Sparhawk, 13 Pick. 393.

In general, a purchaser from the devisee may be said to take with full notice of the charge, Harris *v.* Fly, 7 Paige 422; and the will itself is sufficient notice to the purchaser, Wilson *v.* Piper, 77 Ind. 437; Brooks *v.* Eskins, 24 Mo. Ap. 296; Whittle *v.* Tarver, 75 Ga. 818; or mortgagee. Nash *v.* Taylor, 83 Ind. 347. So too, a pending suit against the administrator. Den *v.* Jones, Coxe 131. But as to the right of a *bona fide* purchaser, before suit actually begun to enforce the charge, see Warren *v.* Raymon, 17 S. C. 163; Grotenkemper *v.* Bryson, 79 Ky. 353.

Discharge of land by payment—Release and waiver. The devisee may discharge the land devised from the lien by payment of the legacy charged. And if the legacy is charged on lands not devised, the heir at law may pay the legacy and take the land. Clayton *v.* Somers, 12 C. E. Gr. 230. But the land will not be discharged from the lien by the devisee's bond to the legatee, although accepted by the legatee and receipted as in full payment, Kelsey *v.* Western, 2 N. Y. 500; nor by the joint bond of the executors as residuary devisees and legatees. Amherst College *v.* Smith, 134 Mass. 543. And a note given by the devisee to the legatee for the legacy may be enforced against the land by an order for sale. Palmer *v.* Simpson, 69 Ga. 792. But where the sum charged on the land appears in the executor's account to have been paid, a *bona fide* purchaser of the land will take the land discharged from the lien, Van Bibber *v.* Reese, 71 Md. 608; Manifold *v.* Jones, 117 Ind. 212. But neither such account without actual payment, nor a personal judgment against the executor and his surety, will relieve the land in the hands of the original devisee, especially where he was also the executor. Reynolds *v.* Bond, 83 Ind. 36. Nor will a judgment for the legacy recovered against the executor and his sureties relieve the land. Reynolds *v.* Bond, *ubi supra.*

The land may be discharged by an express release. But where an annuitant releases the undivided share of one devisee, it will not relieve his codevisees from their proportionate share. Nash *v.* Taylor, 83 Ind. 347. And a

fraudulent release by the guardian of an infant legatee without consideration will be invalid even as to purchasers or mortgagees. Blauvelt *v.* Van Winkle, 2 Stew. (N. J.) 111. So, as to judgment creditors of the devisee, a release without consideration by a trustee. Lancaster Bank's Appeal, 127 Pa. St. 214. If the legatee's rights devolve by his death on the devisee, and would therefore merge in his title, it has been held that such merger will take effect in his grantee and inure to his benefit. Harris *v.* Fly, 7 Paige 422. But see, *contra*, Pennock *v.* Eagles, 102 Pa. St. 290. The legatee waives his rights as against a mortgagee of the land by joining in the mortgage. Thayer *v.* Finnegan, 134 Mass. 62.

Discharge by ademption, lapse, &c. If the land devised and charged with a legacy is afterward sold by the testator, the legacy will be adeemed and the land discharged, Walls *v.* Stewart, 16 Pa. St. 275; but legacy and charge will both remain intact, if the grantee is to pay the legacy as part of the consideration for the conveyance. Tigner *v.* McGehee, 60 Miss. 185; Welch's Appeal, 28 Pa. St. 363. The testator may also revoke the legacy or the charge. But if the land is devised in the will to A. subject to the charge of a legacy, the charge will not be revoked by a codicil devising the same land to B. without mention of the legacy. Devereux *v.* Devereux, 81 N. C. 12. Nor will a subsequent renunciation of the devise by the devisee affect the legatee's rights against the land charged. Young's Appeal, 108 Pa. St. 17; Birdsall *v.* Hewlett, 1 Paige 32. An annuity charged on lands may even be maintained as such, although it was included in the scheme of a testamentary trust which is void. McCormack *v.* McCormack, 60 How. Pr. 196.

Land charged with a legacy may be discharged by the lapsing of the legacy, Hillis *v.* Hillis, 16 Hun 76; Garland *v.* Smiley, 6 Dick. (N. J.) 198, distinguishing between general legacies and legacies charged on the land as to lapse of legacies payable in future. As to this distinction, see Vol. II. pp. 497, n., 555, n., *ubi supra*. But the legacy charged will not lapse because the devise lapses, Thurber *v.* Chambers, 66 N. Y. 42; or because the residuary devise charged lapses in part. Langstroth *v.* Golding, 14 Stew. (N. J.) 49.

Where a devisee is directed to pay a certain sum to the executor to pay legacies, and the money is absorbed with other personal property for the payment of debts, the land is not charged with any further payment for the legacy. Smith *v.* Carroll, 112 Pa. St. 390. And in New York, the land charged with a legacy will not be discharged by a devastavit of the personal property, which was originally sufficient. Blauvelt *v.* De Noyelles, 25 Hun 590.

Discharge by sale. Where the land is sold under an express power of sale, it is sold clear, and the charge follows the proceeds. Lombaert's Appeal, 99 Pa. St. 580; Estate of Wainwright, 11 Phila. 147; Turner *v.* Turner, 57 Miss. 775; Danish *v.* Disbrow, 51 Tex. 235. So, under a general power of sale after a devise in trust to the executors. Bradford *v.* Mogk, 55 Hun 482; Woods *v.* White, 97 Pa. St. 222. So, if the land is sold for the payment of the testator's debts, the balance of the proceeds after paying the debts will be subject to the charge. Martin *v.* Cullen, 3 Stew. (N. J.) 426. The legatee cannot object to sale, if a fair price is realized, if the proceeds are applied to the legacy. Randle *v.* Carter, 62 Ala. 95. But where there is a direction to sell and pay the legacy, it may be enforced against the purchaser under the power of sale who has not paid his purchase money. Elstner *v.* Fife, 32 O. St. 358.

In Pennsylvania, lands will be discharged by any judicial sale, such as a sale for unpaid assessments, Bryan's Appeal, 101 Pa. St. 389; or a sheriff's sale on a judgment against the devisee, Hanna's Appeal, 31 Pa. St. 53; Pryer *v.* Mark, 129 Pa. St. 529; the legatee looking to the proceeds of the sale. But see, *contra*, as to a partition sale to which the legatee was not a party, Allegheny National Bank *v.* Hays, 12 Fed. Rep. 663.

Personal liability. A devisee becomes personally liable for payment by the acceptance of a devise which is charged with a legacy, Glen *v.* Fisher, 6 Johns. Ch. 33; Brown *v.* Knapp, 79 N. Y. 136; Kelsey *v.* Western, 2 N. Y. 500; Bushnell *v.* Carpenter, 28 Hun 19; Johnson *v.* Cornwall, 26 Hun 499; Etter *v.* Greenawalt, 98 Pa. St. 422; Headley *v.* Renner, 129 Pa. St. 542; Lofton *v.* Moore, 83 Ind. 112; Burch *v.* Burch, 52 Ind. 136; Porter *v.* Jackson, 95 Ind. 210; Eskridge *v.* Farrar, 34 La. An. 709; Yearly *v.* Long, 40 O. St. 27; Hoover *v.* Hoover, 5 Pa. St. 351; Miltenberger *v.* Schlegel, 7 Pa. St. 241; or conditioned for its payment, Wieting *v.* Bellmyer, 50 Hun 324; Adams *v.* Adams, 14 Allen 65; or for the support of a third person, Dickson *v.* Field, 77 Wis. 439; or which is charged with the payment of debts. Eyre's Appeal, 106 Pa. St. 184. And the devisee's personal liability is irrespective of the value of the land devised, Taliaferro *v.* Day, 82 Va. 79; and notwithstanding the fact that he is expressly exempted from giving bonds; Evans *v.* Foster, 80 Wis. 509; and has an option to pay the legacy by conveying part of the land to the legatee. Dunne *v.* Dunne, 66 Cal. 157. So too, where land is devised and the devisee, and not the land, is made liable for payment of the legacy. Zimmer *v.* Sennott, 134 Ill. 505. But he is not personally liable if he renounces the devise, King *v.* Gridley, 46 Conn. 555; nor unless he accepts it. Perry *v.* Hale, 44 N. H. 363; Wilson *v.* Moore, 86 Ind. 244. His acceptance will, however, be presumed if the gift is beneficial and is not discharged by him. Yawger *v.* Yawger, 10 Stew. (N. J.) 216. And the executor himself purchasing land which is devised charged with a legacy becomes personally liable for its payment, Estate of Blake, 134 Pa. St. 240; although he does not become personally liable for legacies not charged by the fact that he is a devisee under the will. Estate of Duvall, 146 Pa. St. 176.

And, in general, no personal liability falls on a specific devisee for the payment of legacies charged generally on the whole estate, Quackenbush *v.* Quackenbush, 42 Hun 329; or on the real estate, Clayton *v.* Boyce, 62 Miss. 390; if the personal estate is insufficient. Hayes *v.* Sykes, 120 Ind. 180. So, for administration expenses charged generally. Boynton *v.* Laddy, 32 N. Y. S. R. 578. So, where there is a direction that the residuary devisee pay a certain legacy. Pilkins *v.* Peet (Ia.), 54 N. W. Rep. 215. In like manner no personal liability arises from the devisee's acceptance, for a legacy payable "out of the" devised estate, Wallington *v.* Taylor, Saxt. 314; or for debts to be paid out of the proceeds of the land, Hulton's Appeal, 104 Pa. St. 359; or for a legacy to be paid out of the rents, De Haven *v.* Sherman, 131 Ill. 115; or an annuity charged on the rents only, Nudd *v.* Powers, 136 Mass. 273; or for a "living off the land." Commons *v.* Commons, 115 Ind. 162, 596. But see, *contra*, as to debts "which are to be paid from" a specific bequest, Bishop *v.* Howarth, 59 Conn. 455. Where the devisee receives the rents of the land charged, he becomes so far the trustee of the legatee, and cannot set up the Statute of Limitations in his defense

against the legatee. Smith *v.* Smith, 7 Md. 55.

It has been held, in Pennsylvania, that such personal liability may be enforced by an action of debt, Headley *v.* Renner, 129 Pa. St. 542; in the Probate Court. Pierce *v.* Livingston, 80 Pa. St. 99. But to the effect that chancery has exclusive jurisdiction, if there is no express promise, see Lockwood *v.* Stockholder, 11 Paige 87. If the devisee is dead, the suit will be against his personal representatives as an individual debt of the deceased devisee. Glen *v.* Fisher, 6 Johns. Ch. 36. And if the land is devised to several in common, all may be sued together, although the will directs each to pay one-half. Swazey *v.* Little, 7 Pick. 296. Where there is a charge on the land, and the residuary devisee has given the statutory bond, the legatee may proceed on the bond or against the land. Sheldon *v.* Purple, 15 Pick. 528. And he may proceed against the land without exhausting the personal property. Lofton *v.* Moore, 83 Ind. 112. But where the devisee is directed to convey certain land or pay a certain sum of money, and the legatee has had possession of the land during the devisee's lifetime, and as his heir after his death, she cannot sue the devisee's estate for the money. Mitchell *v.* Mitchell, 3 Md. Ch. 71.

Power of sale. Apart from the charging of land just considered and from devises to the executor in trust for special purposes (the consideration of which belongs rather to a treatise on trusts), a testamentary power of sale is frequently given to the executor for debts and legacies or other specified purposes. Such power, although it ordinarily carries no title to the executor, entitles him to the possession of the title deeds of the land. Mills *v.* Mead, 7 Hun 36. As to powers of sale, express and implied, see Vol. I. p. 797, n., *ubi supra.* In general, the terms of the power clearly define its scope. But a general discretionary power to the executor to sell real estate gives him the power to sell for debts. Matter of Powers, 124 N. Y. 361. And a power of sale for legacies must leave the proceeds of the sale liable to be applied for debts, if necessary. Clayton *v.* Somers, 12 C. E. Gr. 230. But where they are authorized to sell or mortgage for debts, a mortgage can be made by them for that purpose only. Iowa Loan & Trust Co. *v.* Holderbaum (Ia.), 52 N. W. Rep. 550. If, however, the power of sale is specifically only for distribution after the death of a devisee for life, and there is no personal property, the court cannot order the executor to pay debts, except by ordinary probate sale under the statute. Lynch *v.* Patchen, 3 Dem. 58. In such case he has no control over the land in the meantime, and if it is needed for the payment of debts, he must apply to the court for an order of sale. James *v.* Beesly, 4 Redf. 236. But if, "after all just debts are paid," there is a provision that the executor may sell to carry out the provisions of the will, it will confer a power to sell for debts. Matter of Rosenfield, 5 Dem. 251. But this has been held not to be so where the land was devised to the executor after payment of the debts with a power of sale and an express direction as to the disposition of the proceeds. Estate of Duffy, 18 N. Y. Supp. 724. So, of a naked power of sale for distribution. Matter of Bingham, 127 N. Y. 296.

If, on the other hand, there is a power of sale for debts, and its execution is not necessary because of the sufficiency of the personal property, the executor cannot transfer the land to the widow by way of distribution (as personal property). Sweeney *v.* Warren, 127 N. Y. 426. Neither can he execute a power of sale for a debt

of the devisee of the land which the will expressly provided should be deducted from the devisee's share as a child (including also residuary real and personal property), Youmans *v.* Youmans, 11 C. E. Gr. 149; nor to pay a debt due to himself which he had neglected to retain out of the personal property or provide for by probate sale. Matter of Willard, 2 Connoly 112. A power of sale for debts and legacies does not exonerate the personal property, and if it is sufficient and sale is made of the real property notwithstanding, the executor must account to devisees for the proceeds and rents. Brearley *v.* Brearley, 1 Stock. 21. So, as to the balance of the proceeds of a sale properly made for debts and legacies. Cook *v.* Cook, 5 C. E. Gr. 375. And if the sale is made under a direction to sell for distribution, a judgment against distribution will follow the proceeds as a lien on the particular share. Koons *v* Mellett, 121 Ind. 585. In New York, the surrogate may require an account of the proceeds of sales made under a power. Hood *v.* Hood, 85 N. Y. 561; Bloodgood *v.* Bruen, 2 Bradf. 8; Slagg *v.* Jackson, 1 N. Y. 206, affg. 2 Barb. Ch. 86.

Under a discretionary power of sale it has been held that the executor may dedicate a public street. Matter of Sixty-Seventh Street, 60 How. Pr. 264. But a specific power of sale does not carry the proceeds of a condemnation of land unless necessary for the trust or for debts. Cashman *v.* Wood, 6 Hun 520.

The execution of an express power of sale for debts is not barred by lapse of time, and a purchaser from the devisee (even after ten years) takes subject to the eventual execution of the power. Morse *v.* Hackensack Savings Bank, 2 Dick. (N. J.) 279. But a power of sale for distribution has been held to have expired in forty-three years. Smiley *v.* Jones, 3 Tenn. Ch. 312. As to time for executing powers of sale, see p. *1726, n., *infra.*

A power of sale may be valid for the payment of debts, although coupled with void trusts for other purposes. Matter of Gantert, 43 N. Y. S. R. 802. And if the trustee or executor neglects to execute the power, the court may compel its execution, where it is necessary, Hancox *v.* Wall, 28 Hun 214; and may appoint another trustee for that purpose. Fulton *v.* Harmon, 44 Md. 251. The statute provides for the execution of an express power of sale by a foreign executor, in *Iowa* (Laws 1880, c. 162); and the act has been held to be constitutional, although retrospective. Smith *v.* Callaghan, 66 Ia. 552.

As to the execution of a power of sale by the successor or survivor of the original donees, see Vol. I. p. 565, n., and Vol. II. p. 155, n., *ubi supra.*

Liability of heirs and devisees. Lands of which the deceased was seized at his death are subject to the payment of his debts in the hands of his heirs or devisees. Fletcher *v.* Wormington, 24 Kan. 259; Scott *v.* Ware, 64 Ala. 174; Lewis *v.* Ford, 67 Ala. 143; Shannon *v.* Newton, 132 Pa. St. 375; Le Moyne *v.* Harding, 132 Ill. 23. This includes lands devised upon a valuable consideration, Cochran *v.* Cochran, 146 Pa. St. 223; and lands devised to the widow, Wanger's Appeal, 105 Pa. St. 346; but not dower lands. Alexander *v.* Byrd, 85 Va. 691. Where lands specifically devised for the payment of debts are insufficient, other lands devised are charged. Duncan *v.* Gainey, 108 Ind. 579. So, where there is no personal property, and the lands devised are condemned for a street, the damages are charged with the testator's debts. Mallory *v.* Craige, 2 McCart. 73. This liability is held to be a lien, in Pennsylvania, Chapman's Appeal, 122 Pa. St. 331; for the term

of five years and no longer, unless action is begun, Oliver's Appeal, 101 Pa. St. 299; Chapman's Appeal, *ubi supra;* and in Wisconsin, for three years. Fisk *v.* Jenewein, 75 Wis. 254. But in South Carolina, it is not a lien, but a right to pursue the real property after judgment against the executor. Brazel *v.* Fair, 26 S. C. 370.

Grantees from the heir or devisee take subject to the ancestor's debts, Rutherford *v.* Stamper, 60 Tex. 447; Cooper *v.* Loughlin, 75 Tex. 524; Lewis *v.* McGraw, 19 Ill. Ap. 313; until after the statutory term for administration, Davis *v.* Perry, 96 N. C. 260; Renan *v.* Banks, 83 N. C. 483; after which time the heir or devisee may sell clear of debts. Brandon *v.* Phelps, 77 N. C. 44; Winfield *v.* Burton, 79 N. C. 388. In South Carolina, his mortgagee takes subject to the debts of the ancestor, Simons *v.* Bryce, 10 S. C. 354; but a *bona fide* grantee takes clear of the debts, and the devisee remains liable for the consideration received. Richardson *v.* Chappell, 6 S. C. 146. So, in New Jersey, until action brought by the creditor against heirs and devisees under the statute (although for one year after the ancestor's death the land is liable to be sold by the personal representative for debts under the order of the Probate Court). Skillman *v.* Van Pelt, Saxt. 511.

In the absence, however, of express statutes (and except in the case of specialty debts under the common law) a creditor cannot bring suit directly at law against the heir for a debt of the ancestor, although there is no administration, Northwestern Conference *v.* Meyers, 36 Ind. 375; Wilson *v.* Davis, 37 Ind. 141; and although the heir has agreed that there should be no administration. Leonard *v.* Blair, 59 Ind. 510. And he cannot sue the devisees even on a bond by the testator binding in terms upon himself and his heirs. Sauer *v.* Griffin, 67 Mo. 654. But where a breach of the decedent's covenant happens after the settlement of the estate and the discharge of the administrator, he may bring his suit on the covenant against the heirs without further administration. Walker *v.* Deaver, 79 Mo. 664.

Statutory action. In some states both heirs and devisees are made liable by statute to the extent of lands received by them for the debts of the ancestor, *California* (Code C. P. § 1565), *Kentucky* (1887 G. S. c. 44, § 5), *North Carolina* (1882 Code, § 1528), *Wisconsin* (1889 R. S. § 3274); and also their heirs and devisees, in *California* (Civil Code, § 1408), *Kentucky* (1887 G. S. c. 44, § 9). So, too, St. Mary's Church *v.* Wallace, 5 Halst. 311. In other states they may be sued by a creditor, if the personal estate is not sufficient to pay the debts. *Illinois* (1891 R. S. c. 59, § 12), *Michigan* (1882 An. Stats. § 5937), *Minnesota* (1891 Stats. §§ 5589, 5590), *New York* (Code C. P. § 1848), *Rhode Island* (1882 P. S. c. 189, § 14), *Tennessee* (1884 Code, § 3091). Other statutes provide for an action at law against heirs and devisees to the extent of the assets received by them, *Iowa* (1888 R. C. § 2485), *Maine* (1883 R. S. c. 87, § 15), *Maryland* (1888 P. G. L. Art. 75, §§ 41, 138), *New Jersey* (1877 Rev. 476), *New York* (Code C. P. §§ 1843–44); or against the personal representative and the heirs and devisees jointly, *Kentucky* (1887 G. S. c. 44, § 6), *Pennsylvania* (1883 Purd. Dig. 580, § 112); or against the heirs and devisees of several joint obligors. *South Carolina* (1882 G. S. § 1949). In *Maryland* (P. G. L. Art. 9, § 25) the lands may be attached in the hands of the heir or devisee for the ancestor's debts. In New Jersey, the statute makes the heir or devisee liable for the consideration received for lands conveyed by him

before action brought. And the statute has been held, in New York, to apply to the heirs of one already deceased, Read *v.* Patterson, 134 N. Y. 128; and to a legatee electing to take his legacy in land. Armstrong *v.* McKelvey, 104 N. Y. 179.

Other statutes provide for a suit against heirs and devisees in behalf of creditors who have been under disability during the time for proceeding against the personal representatives, *Indiana* (1894 Rev. § 2597), *Massachusetts* (1882 P. S. c. 136, § 26), *Ohio* (1890 R. S. § 6217); or where the debt was not presented in the statutory time to the executor, or accrued afterward, in *Maine* (1883 R. S. c. 87, § 15). The suit can only be brought after the estate is settled, and an action against the personal representative is barred, in Massachusetts and Ohio, Brooks *v.* Rayner, 127 Mass. 268; Grow *v.* Dobbins, 128 Mass. 271; and not pending the administration of the estate and after its presentment as a claim to the administrator, Busenbark *v.* Healey, 93 Ind. 450; and only after three years from the issuing of letters or from the death of the deceased, if there is no administration, in New York, Butts *v.* Genung, 5 Paige 254; Selover *v.* Coe, 63 N. Y. 438; and within a prescribed time, in Indiana, Maine, and Massachusetts. Mackim *v.* Doane, 137 Mass. 195. And if the statute requires action against the administrator within a prescribed time after rejection, action must be brought within that time against the heir, Selover *v.* Coe, 63 N. Y. 438, although failure to sue the administrator will not relieve the heir. So, Fisher *v.* Fuller, 122 Ind. 31. In other cases the suit must be brought within the time limited for other actions on such debts, Andreas *v.* Powell, 97 N. C. 155; Gilliland *v.* Caldwell, 1 S. C. 194; Allen *v.* Krips, 125 Pa. St. 504; Fisk *v.* Jenewein, 75 Wis. 254; or for "a liability created by statute." Trustees Orphan School *v.* Fleming, 10 Bush 234. But in South Carolina, the heir cannot hold by adverse possession against creditors of the decedent. Wheeler *v.* Floyd, 24 S. C. 413. Other statutes provide for an action in equity against the heirs and devisees, *Virginia* (1887 Code, § 2608), *West Virginia* (1891 Code, c. 86, § 6); or to enforce the lien against a specific devise. *Kentucky* (1887 G. S. c. 44, § 10). And all legacies and devises are required to contribute, if any estate bequeathed or devised is taken for debts, in *Connecticut* (1888 G. S. § 556).

Under these statutes suit may be brought against the heirs and devisees for a breach of the ancestor's covenant, New Jersey Insurance Co. *v.* Meeker, 8 Vroom 282; or to enforce his liability as indorser on a note maturing after his death, Dodson *v.* Taylor, 24 Vroom 200; or a contingent liability as surety, Hecht *v.* Skaggs, 58 Ark. 291; though ascertained only after the administrator's discharge, Gibson *v.* Mitchell, 16 Fla. 519; or for waste by him as executor of another estate. Purcelly *v.* Carter, 45 Ark. 299. But see Rynearson *v.* Turner, 52 Mich. 8. And the fact that the heir is a married woman, and would not as such be liable on her own contract in her own domicil, is no defense as to the debt of the ancestor against land descending to her in another state. Wadsworth *v.* Henderson, 16 Fed. Rep. 447. But the liability is confined to the assets received by the heir or devisee. People *v.* Brooks, 123 Ill. 246; Cutright *v.* Stanford, 81 Ill. 240; Lowry *v.* Jackson, 27 S. C. 318.

Form of action. In some states the personal representative cannot be joined as defendant in the same suit with the heirs and devisees, Greene *v.* Martin, 27 Hun 246; Emerich *v.* White, 12 Phila. 189; and judgment should be first recovered against the representa-

tive, Emerich *v.* White, *ubi supra;* Hawley *v.* Botsford, 27 Conn. 80; Bacon *v.* Thorp, Id. 251; but in Illinois it is held that the personal representative must be joined in the suit, unless judgment has been already recovered against him. Hoffman *v.* Wilding, 85 Ill. 453.

In some states the ordinary proceeding is by bill in equity against the heirs and devisees, as for the enforcement of a trust, Chewett *v.* Moran, 17 Fed. Rep. 820; Payson *v.* Hadduck, 8 Biss. 293; to the exclusion of any action at law. Hendricks *v.* Keesee, 32 Ark. 714; Rex *v.* Creed, 22 W. Va. 373. So, where the heirs are infants and there is no administration. Hagan *v.* Patterson, 10 Bush 441. In other states the statutory action at law has superseded the creditor's bill in equity and the latter is no longer maintainable. Butts *v.* Genung, 5 Paige 254; Mutual Life Insurance Co. *v.* Hopper, 16 Stew. (N. J.) 387; Titterington *v.* Hooker, 58 Mo. 593.

Effect of non-presentment. If the claim was not duly presented to the personal representative, no action will lie against the heirs or devisees without excusing the non-presentment, Bean *v.* Baker, 74 Me. 17; Fowler *v.* True, 76 Me. 43; Hall *v.* Bumstead, 20 Pick. 2; Chewett *v.* Moran, 17 Fed. Rep. 820; Bryant *v.* Livermore, 20 Minn. 313; Hill *v.* Nichols, 47 Minn. 382; even in equity, Public Works *v.* Columbia College, 17 Wall. 521; and see Vol. II. p. 234, n., *ubi supra;* and although the debt is on a specialty, Brewster *v.* Gillison, 10 Rich. Eq. 435; if its allowance would have altered the shares of the devisees, Hood *v.* Hood, 80 Ky. 39; and especially where the claim was due to the administrator (himself an heir), and the suit was against a co-heir for contribution. Janes *v.* Brown, 48 Ia. 568. But the plaintiff's nonresidence is a sufficient excuse for non-presentment in an action against the heirs. McCurdy *v.* Bowes, 88 Ind. 583. So too, the fact that the debt was payable in installments which matured after the time for presentment, Sampson *v.* Sampson, 63 Me. 328; or was contingent and became absolute after the estate was settled. Mann *v.* Everts, 64 Wis. 372; McKeen *v.* Waldron, 25 Minn. 466; Walker *v.* Byers, 14 Ark. 246; Payson *v.* Hadduck, 8 Biss. 293; Hall *v.* Martin, 46 N. H. 337; Davis *v.* Van Sands, 45 Conn. 600; Clark *v.* Winchell, 53 Vt. 408; although the contrary seems to have been held, in Cincinnati &c. Railway Co. *v.* Heaston, 43 Ind. 172. And in New Jersey, non-presentment to the executor or administrator is no defense to a suit brought against the heirs and devisees. Stone *v.* Todd, 20 Vroom 474.

Sufficiency of personal property. In general, action cannot be brought against the heir or devisee, when the personal estate is sufficient, Selover *v.* Coe, 63 N. Y. 438; Butts *v.* Genung, 5 Paige 254; McLean *v.* McBean, 74 Ill. 134; Laughlin *v.* Heer, 89 Ill. 119; Foster *v.* Crenshaw, 3 Munf. 514; Hinton *v.* Whitehurst, 71 N. C. 66; Draper *v.* Barnes, 12 R. I. 156; Guy *v.* Gericks, 85 Ill. 428; Pauley *v.* Langdon, 83 Ind. 353; Sommerville *v.* Sommerville, 26 W. Va. 484; nor until the account has been settled, Skidmore *v.* Roumaine, 2 Bradf. 122; Rinard *v.* West, 92 Ind. 359; and the deficiency ascertained. Thompson *v.* Brown, 4 Johns. Ch. 619; Badger *v.* Daniel, 79 N. C. 372. And a prior absolute judgment against the administrator is conclusive evidence of the sufficiency of the personal property in his hands. Ellicott *v.* Welch, 2 Bland 242. But although the personalty was originally sufficient and has been wasted by the executor, the action may be brought by the creditor against legatees, Leake *v.* Leake, 75 Va. 792; or devisees.

Smith *v.* Seaton, 117 Pa. St. 382. See, however, *contra*, Clayton *v.* Boyce, 62 Miss. 390. And where the devisee has taken part in the devastavit, he cannot require the creditor to first exhaust his remedy against the administrator's sureties. Watts *v.* Taylor, 80 Va. 627. And in New Jersey, the creditor has his statutory action against heirs and devisees irrespective of the sufficiency of the personal estate. Stone *v.* Todd, 20 Vroom 274; Dodson *v.* Taylor, 24 Vroom 200.

Devisee's title—Rents and proceeds. In Indiana, the heir must have taken the land directly from the ancestor for whose debt the suit is brought. Adams *v.* Stake, 67 Md. 447. But the liability of a devisee is not affected by the fact that the land devised was subject to a power of sale in the executor for debts which was not executed, and expired by its own limitation. Armstrong *v.* McKelvey, 104 N. Y. 179.

In some states the creditor may require the heir or devisee to account for the rents received by him after deducting current expenses. Sibley *v.* Simonton, 20 Fed. Rep. 784; Washington *v.* Sasser, 6 Ired. Eq. 336. But this is not so in New Jersey, where the land is to be valued as at the decedent's death, Fredericks *v.* Isenman, 12 Vroom 212; nor where they have been expended for the necessary maintenance of an infant heir. Moore *v.* Shields, 68 N. C. 327. And if no rents have been received, the judgment should be satisfied out of the lands only. Brange *v.* Lucy, 82 Ill. 91. In Georgia, the judgment is *in rem* for sale of the land devised. Wall *v.* Jones, 62 Ga. 225. In Texas, it is a personal one against the heir. Mayes *v.* Jones, 62 Tex. 365. If, however, the heir has transferred the land before action brought against him, the judgment should be against him personally for the consideration received. Den *v.* Jaques, 5 Halst. 259; Winfield *v.* Burton, 79 N. C. 388; Traud *v.* Magnes, 49 N. Y. Super. Ct. 309; Hopkins *v.* Ladd, 12 R. I. 279. And in Virginia, all must contribute to make up the value of land transferred by one of the heirs who is insolvent. Ryan *v.* McLeod, 32 Gratt. 387; Lewis *v.* Overby, 31 Gratt. 601.

Judgment against personal representative. The action against the heir should be upon the original debt, and not upon a judgment already recorded upon it against the personal representative, Haynes *v.* Colvin, 19 Ohio 392; although he is a party to the suit against the heir. Watts *v.* Taylor, 80 Va. 627. And such judgment is not conclusive against the heir, Tilley *v.* Bivins, 112 N. C. 348; Buntyn *v.* Holmes, 9 Lea 319; Jones *v.* Commercial Bank, 78 Ky. 418; nor even evidence of the indebtedness as against him. Daingerfield *v.* Smith, 83 Va. 81; Brewis *v.* Lawson, 76 Va. 36. So, a judgment against the administrator and heirs in a suit to enforce a lien is not conclusive against the heirs in a subsequent suit to make them personally liable. Jones *v.* Commercial Bank, 78 Ky. 418. But if the court makes a settlement with the administrator, it will inure to the benefit of the heir and constitute a bar to the action against him. Silvers *v.* Canary, 114 Ind. 129.

The judgment should be, in general, against all the devisees or heirs, Foster *v.* Crenshaw, 3 Munf. 514; either jointly, leaving them to seek contribution among themselves, Badger *v.* Daniel, 79 N. C. 372; Vanmeter *v.* Love, 33 Ill. 260; or directing a *pro rata* payment by them severally. Cutright *v.* Stanford, 81 Ill. 240; Stroud *v.* Barnett, 3 Dana 391; Hauselt *v.* Patterson, 124 N. Y. 349. If, however, the proof fails as to some of the defendants judgment may be taken against the others. Judson *v.* Gibbons, 5 Wend. 224.

*SECTION II.

Of Marshaling the Assets in favor of Creditors and Legatees.†

It is a general principle of equity, that if a claimant has two funds to which he may resort, a person, having an interest in one only, has a right to compel the former to resort to the other; if that is necessary for the satisfaction of both (*t*). This principle is not confined to the administration of the estate of a person deceased, but applies wherever the election of a party having two funds will disappoint the claimant having the single fund: And accordingly, a Court of Equity will, if necessary, control that election, and compel the one to resort to that fund, which the other cannot reach (*u*). But the more general practice is, to protect the claimant on the single fund by marshaling the assets.

In favor of creditors.

Thus if the deceased died before the passing of the stat. 3 & 4 Wm. IV. c. 104 (*x*), *i.e.*, before the 29th of August, 1833, and there were creditors of the deceased by specialty, and creditors by simple contract, and the specialty creditors, instead of resorting to the real assets, which they alone could reach, proceeded against the personal estate, to the exclusion of the simple contract creditors, who had no other fund, a Court of Equity would marshal the assets by permitting the simple contract creditors to stand in the place of the specialty creditors against the real assets, so far as the latter should have exhausted the personal (*y*): And the rule *was the same with respect to real assets devised, as those descended (*z*).

† See American note at end of this section.

(*t*) Aldrich *v.* Cooper, 8 Ves. 388. Tidd *v.* Lister, 3 De G. M. & G. 857, 872. Haynes *v.* Forshaw, 11 Hare, 93. Legh *v.* Legh, 15 Sim. 135. Finch *v.* Shaw, 19 Beav. 500. Gibson *v.* Seagrim, 20 Beav. 614. South *v.* Bloxham, 2 Hemm. & M. 457.

(*u*) See Fonbl. Treat. Eq. B. 3, c. 2, s. 6, note (*i*).

(*x*) See *ante*, p. *1558.

(*y*) But they shall not stand in the place of the specialty creditors as to the interest which would have accrued on the specialty debts if they had remained unsatisfied; Cradock *v.* Piper, 15 Sim. 301.

(*z*) Selby *v.* Selby, 4 Russ. Ch. C. 341. So covenantees, who claim under a merely voluntary covenant, have been held entitled, as against devisees, to stand in the place of mortgagees, who have exhausted the fund provided by the testator for the payment of debts; Lomas *v.* Wright, 2 M. & K. 769. Hales

So in the case of Aldrich *v.* Cooper (*a*), the testator died seised of freehold and copyhold estate, both of which were subject to mortgage: The personal estate was exhausted in payment of the mortgage and of two bonds upon which the testator was indebted to the mortgagee: And Lord Eldon held, that the simple contract creditors were entitled to stand in the place of the mortgagee *pro tanto*, against both the freehold and the copyhold estate. So in another case (*b*). the specialty creditors of a deceased mortgagor of copyhold and freehold estate were allowed to stand in the place of the mortgagee against the copyholds, to the extent of the sum which the mortgagee had received from the freehold estate (*c*).

Again, if the vendor of an estate, the contract for which was not completed in the lifetime of the testator, who was the purchaser, is afterward paid his purchase-money out of the personal assets, the simple contract creditors of the testator shall stand in the place of the vendor, with respect to his lien on the estate sold, against the devisee of that estate (*d*).

*Formerly there was a doubt (*e*) as to how far this principle of equity could be applied to prevent a secured creditor from proving under a decree in a creditor's suit for the full amount of his debt, but now this question cannot arise, since by the Judicature Act, 1875, sect. 10, the rules of bankruptcy on this point are imported into the administration of insolvent estates (*f*).

In favor of legatee.

A similar equity will be extended in favor of legatees: Thus where a specialty creditor, who has a general lien on the real estate, as a creditor by bond in which the deceased bound himself and his heirs, receives satisfaction out of the

v. Cox, 32 Beav. 118. But the assets shall not be marshaled against judgment creditors: Sharpe *v.* Lord Scarborough, 4 Ves. 538. Now, however, it would seem that the courts would not give any priority to a judgment creditor until he has obtained a charge by getting the land delivered in execution.

(*a*) 8 Ves. 381, overruling Robinson *v.* Tonge, 1 P. Wms. 679, note.

(*b*) Gwynne *v.* Edwards, 2 Russ. Ch. C. 289, *in notis.*

(*c*) The specialty creditors could not otherwise have reached the copyhold; for copyhold estates previous to the passing of the stat. 3 & 4 Wm. IV. c. 104 (see *ante*, p. *1558), were not liable either at law or equity to the testator's debts, further than he had subjected them thereto.

(*d*) Selby *v.* Selby, 4 Russ. Ch. C. 336.

(*e*) Greenwood *v.* Taylor, 1 Russ. & M. 185. Mason *v.* Bogg, 2 M. & Cr. 443.

(*f*) See Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), 2nd Sched. rules 9–11.

personal estate, and thereby exhausts it so as to leave nothing for the payment of legacies, a legatee shall stand in the place of such specialty creditor as against the real assets which have *descended* to the heir (*g*). "In the case of legatees," said Lord Eldon, in Aldrich *v.* Cooper (*h*), "against assets descended, a legatee has not so strong a claim to this species of equity as a creditor: but the mere bounty of the testator enables the legatees to call for this species of marshaling; that if those creditors, having a right to go to the real estate descended, will go to the personal estate, the choice of the creditors shall not determine whether the legatee shall be paid or not."

And on the same principle it seems to be clear, that if, since the passing of the stat. 3 & 4 Wm. IV. c. 104 (*i*), by *which the real estate is made liable to simple contract debts, a simple contract creditor should receive satisfaction out of the personal estate and thereby exhaust it, the legatees would be allowed to stand in his place against the real assets which have descended.

But where the real estate does not descend to the heir, but is *devised* to a stranger, or to the heir taking as devisee (*k*), the assets are not marshaled in favor of general legatees, so as to throw the

(*g*) Bowaman *v.* Reeve, Prec. Chanc. 578. Lutkins *v.* Leigh, Cas. temp. Talb. 54. Hanby *v.* Roberts, Ambl. 128. Therefore where the executor of a testator is a mortgagee of the real estate, as to which there was an intestacy, and also a legatee under his will, he is not bound to satisfy the mortgage debt out of the first sufficient sum of personal assets that comes to his hands, the reason being, that if he were compelled to do so, and thus to exhaust the personal estate, he would be entitled to come against the real estate to the extent to which the legacy remained unsatisfied: Binns *v.* Nicholls, L. R. 2 Eq. 256.

(*h*) 8 Ves. 396.

(*i*) *Ante*, p. *1558.

(*k*) See the MS. note of Sergeant Hill, in Blunt's edition of Ambler, p. 383, on the question, whether a devise of land to the heir, which is void as to passing the estate, shall not exempt the lands from the legatees' right to stand in the place of specialty creditors. It has been held by Sir L. Shadwell, V.-C., that since the stat. 3 & 4 Wm. IV. c. 106 (*Act for the Amendment of the Law of Inheritance*), wherever there is a devise to the heir, he must be considered to all intents and purposes as taking by devise and not by descent; for the third section of that statute (whereby it is provided that when any land shall have been devised by any testator, who shall die after Dec. 31, 1833, to his heir, such heir shall be considered to have acquired the land as devisee and not by descent) is not to be considered as relating exclusively to the law of inheritance, but has also application with regard to assets: Strickland *v.* Strickland, 10 Sim. 374. And even in cases where the testator died before Dec. 31, 1833, so as not to be within the operation of this act, the estates devised to the heir are not in equity to be applied

[*1588]

creditors on the real assets *devised* (*l*). And this rule is not confined to specific devises of land, but extends to lands which pass under a residuary devise (*m*). If, indeed, the lands devised are *charged with debts*, the assets will be marshaled; for lands so charged are *applicable to the payment of debts before general pecuniary legacies (*n*).

With respect to specific legatees, the assets shall be so far marshaled against the specific devisees of real estate, upon failure of the general personal estate, that the devisee and specific legatee shall each, in proportion to their respective gifts, *contribute* to the payment of the specialty debt (*o*).

to the payment of the testator's debts in priority to other parts of his estate devised to other persons: Biederman *v.* Seymour, 3 Beav. 368.

(*l*) Clifton *v.* Burt, 1 P. Wms. 678. Scott *v.* Scott, Ambl. 383. Hanby *v.* Fisher, Ambl. 128. Keeling *v.* Brown, 5 Ves. 359. Aldrich *v.* Cooper, 8 Ves. 397.

(*m*) Mirehouse *v.* Scaife, 2 M. & Cr. 695. But it must be remembered that, notwithstanding sect. 24 of the Wills Act, a residuary devise is still specific and therefore a general pecuniary legatee has no right to have the assets marshaled as against the residuary devisee: Hensman *v.* Fryer, L. R. 3 Ch. 420. Gibbins *v.* Eyden, L. R. 7 Eq. 371. Lancefield *v.* Iggulden, L. R. 10 Ch. 136: the effect of which would be to throw the whole deficiency of the pecuniary legacy on the devised estate. It will be seen, however, that Lord Chelmsford, in Hensman *v.* Fryer, whilst deciding that the pecuniary legatee had no right, by marshaling in the sense above mentioned, to throw upon the devisee the whole deficiency, yet decided that the residuary real estate devised and the pecuniary legacies were respectively liable to contribute to the debts of the testator, which his general personal estate was insufficient to satisfy, *pro rata*. But this decision is contrary to the settled rule that personal estate not specifically bequeathed must be first applied in payment of debts before the real estate which passes under a residuary devise can be resorted to, and accordingly has not been followed. Collins *v.* Lewis, L. R. 8 Eq. 708. Dugdale *v.* Dugdale, L. R. 14 Eq. 234. Tomkins *v.* Colthurst, 1 C. D. 626. Farquharson *v.* Floyer, 3 C. D. 109.

(*n*) Foster *v.* Cook, 3 Bro. C. C. 347. Paterson *v.* Scott, 1 De G. M. & G. 531. Surtees *v.* Parkin, 19 Beav. 406. The law on this subject is not affected by the stat. 3 & 4 Wm. IV. c. 104: Rickard *v.* Barrett, 3 Kay & J. 289.

(*o*) Long *v.* Short, 1 P. Wms. 403. Tombs *v.* Roch, 2 Coll. 490. Gervis *v.* Gervis, 14 Sim. 654. But a testator may by the terms of his will exclude this rule if his intention be clear. Thus in Bateman *v.* Hotchkin, 10 Beav. 426, where a testator directed all his debts in the first place to be paid out of his personal estate, except his leaseholds, if sufficient, and if not, he charged his real estate therewith, it was held by Lord Langdale that the specific legacies were liable to the payment of the debts in priority of the real estate. And in Raikes *v.* Boneton, 29 Beav. 41, Romilly, M.R., held that as between a portion charged on real estate and the person to whom the real estate was devised subject to the portion, the lat-

[*1589]

Before the passing of Locke King's Act and the acts amending it, much discussion occurred as to the rights of general legatees in cases, where a creditor having a specific lien on the real estate resorted to the personalty, to have the assets marshaled against real assets, and also as to the law in the case of a vendor having an equitable lien for unpaid *purchase-money. The general result of the authorities was in favor of the right of pecuniary legatees; but it is apprehended that no such discussion can arise hereafter in cases falling within the operation of the above acts, since by them the real estate subject to the lien is made the primary fund for the payment of the debts secured by the lien; and the right of the pecuniary legatee, as well as that of residuary legatees and the next of kin, to marshal, can no longer be questioned, and it is not thought necessary to deal with the cases in which these questions were discussed, in this edition of this work.

Another instance of marshaling the assets in favor of legatees occurs where one or more legacies are charged on the real estate, and there is another legacy which is not so charged. There the legatee, whose legacy is not so charged, shall stand in the place of the former legatees, to be satisfied out of the real assets (*p*).

It is clearly established that the court will not marshal assets in favor of a charitable bequest, so as to give it effect out of the personal assets, when it would be void by touching an interest in land (*q*).

ter alone were liable to make good the deficiency of the testator's general personal estate. See also Re Saunders-Davies, 34 C. D. 482.

(*p*) Bligh *v.* Lord Darnley, 2 P. Wms. 620. Bonner *v.* Bonner, 13 Ves. 379. 2 M. & Cr. 700. There is no distinction between the case of a class of legacies and a case of individual legacies; for the court presumes that the testator's intention in charging the land is that all the legacies shall be paid in full: Scales *v.* Collins, 9 Hare, 656.

(*q*) Robinson *v.* Geldard, 3 Mac. & G. 735, 744, by Lord Truro. But where the testator (so to speak) marshals his own assets by directing that a charitable legacy shall be paid out of pure personalty, the result of such a direction is that such legacy is payable in full out of pure personalty, in priority to other legacies. Robinson *v.* Geldard, 3 Mac. & G. 735. In this case Lord Truro said that he considered the charitable legacies so directed to be paid as being analogous to, if not strictly identical with, demonstrative legacies. This direction, however, does not exempt the charitable legacy from bearing its proportion of debts, funeral and testamentary expenses, as it would do if it made the legacy strictly *demonstrative.* Tempest *v.* Tempest, 7 De G. M. & G. 470. Beaumont *v.* Oliveira, L. R. 4 Ch. 309, affirming the decision of Stuart, V.-C., L. R. 6 Eq. 534. But it

[*1590]

*It seems convenient in reference to marshaling to set forth the order in which, in the absence of a contrary intention sufficiently expressed, assets are applied in the payment of debts:

Order in which assets are applied in payment of debts.

(1) The general or residuary personalty, not specifically bequeathed or exonerated or exempted (*r*).

(2) Real estates appropriated to, and not merely charged with, the payment of debts (*s*).

*(3) Real estates descended, whether acquired before or after the making of the will (*t*).

should be noted that in the case of testators dying after August 5th, 1891, attempts to marshal for the benefit of a charity are rendered unnecessary, for by sect. 3 of the Mortmain and Charitable Uses Act, 1891 (54 & 55 Vict. c. 73), impure personalty has been exempted from the provisions of the Mortmain and Charitable Uses Act, 1888 (the statute now in force): and by sect. 3 land may be assured by will for any charitable use, but must be, except as otherwise provided by the act, sold within a year of the testator's death. Leaseholds apparently fall within the definition of land in sect. 3. See Re Kershaw, 37 C. D. 674, where the similar words "any land or other hereditaments of whatever tenure" in 40 & 41 Vict. c. 34, were construed to include leaseholds.

(*r*) Manning *v.* Spooner, 3 Ves. 117. Harmood *v.* Oglander, 8 Ves. 124. As to the primary liability of mortgaged or charged lands to bear their own charges by Locke King's Acts, see *ante*, p.*1570 *et seq.*

As to the exoneration of personal estate as against the heirs or devisees of real estate, see *ante*, p. *1576 *et seq.* The principle was laid down in Fisher *v.* Fisher, 2 Keen, 610, and followed by Wood *v.* Ordish, 3 Sm. & G. 125, that as between the heir-at-law, the next of kin, and the residuary devisees and legatees, a lapsed share of real and personal estate ought to be applied in the same order as if the legatee had survived. Ryves *v.* Ryves, L. R. 11 Eq. 539. See also Stead *v.* Hardaker, L. R. 15 Eq. 175. Blann *v.* Bell, 7 C. D. 382. In Gowan *v.* Broughton, L. R. 19 Eq. 77, Malins, V.-C., seems to have considered that a lapsed share of residuary personal estate should exonerate the other shares and be the primary fund for the payment of the costs of an administration suit, but the Vice-Chancellor in Re Jones, 10 C. D. 40, said that all he intended to decide in Gowan *v.* Broughton was that where the residuary personalty is given to a person who dies in the life of the testator such personalty is no less the primary fund than it would have been if the legatee had survived. And the cases of Trethewy *v.* Helyar, 4 C. D. 53, and Fenton *v.* Wills, 7 C. D. 33, are direct authorities that what Malins, V.-C., appeared to decide in Gowan *v.* Broughton cannot be supported.

(*s*) Manning *v.* Spooner, 3 Ves. 117. Harmood *v.* Oglander, 8 Ves. 124. Phillips *v.* Parry, 23 Beav. 279.

(*t*) Wride *v.* Clarke, 2 Bro. C. C. 261, n. Harmood *v.* Oglander, *ubi sup.* Row *v.* Row, L. R. 7 Eq. 414. Freeholds escheating to the lord are assets for payment of debts, but whether in priority to or *pari passu* with lands spe-

(4) Real estates devised, charged with the payment of debts (*u*).
(5) General pecuniary legacies *pro rata* (*x*).
(6) Specific and residuary devises and specific legacies *pro rata* (*y*).
(7) Real and personal property which the testator has power to appoint, and which he has appointed, by his will (*z*).
(8) The wife's paraphernalia are assets for her deceased husband's debts (*a*).

cifically devised is doubtful. Evans *v.* Brown, 5 Beav. 114.

(*u*) Harmood *v.* Oglander, *ubi sup.* Davis *v.* Topp, 1 Bro. C. C. 524.

(*x*) Clifton *v.* Burt, 1 P. W. 680. Lord Chelmsford, in Hensman *v.* Fryer, L. R. 3 Ch. 420, decided that pecuniary legatees and residuary devisees must contribute *pro rata*, but this decision has not been followed. See *ante*, p. *1589 (*m*). Kay, J., in Re Bate, 43 C. D. 600, seems to have held that the classification of general pecuniary legacies after real property devised charged with debts is wrong, but it is not quite clear in what position in the series the learned judge would put pecuniary legacies. If such legacies come before real property charged with debts there seems no reason why pecuniary legacies should not be placed between classes 1 and 2.

(*y*) Manning *v.* Spooner, *ubi sup.* Lancefield *v.* Iggulden, L. R. 10 Ch. 136. Tombs *v.* Roch, 2 Coll. 490. Jackson *v.* Pease, L. R. 19 Eq. 96. Demonstrative legacies are specific only so far as the funds appropriated to them by the testator are sufficient to meet them. Sellon *v.* Watts, 9 W. R. 847.

(*z*) Fleming *v.* Buchanan, 3 D. M. & G. 976. Holmes *v.* Coghill, 7 Ves. 499. 12 Ves. 206. As to property over which married women have a testamentary power, see *ante*, p. *1550 (*z*).

(*a*) Parker *v.* Harvey, 4 Bro. P. C. 609. Ridout *v.* Earl Plymouth, 2 Atk. 104.

---

†*Order of liability for debts.* The order of liability of assets as stated in the text will be found (with the exception of the eighth category) in 3 Jarm. on Wills 449. See also, to the same effect, Heerman *v.* Robertson, 64 N. Y. 332; Commonwealth *v.* Shelby, 13 Serg. & R. 348; Warley *v.* Warley, 1 Bail. Eq. 397; Pell *v.* Ball, Speers Eq. 518; but see Alexander *v.* Waller, 6 Bush. 330; McCampbell *v.* McCampbell, 5 Litt. 97; Hays *v.* Jackson, 6 Mass. 153; Estate of Walker, 3 Rawle 241; Hall *v.* Hall, 2 McCord Ch. 269; Mitchell *v.* Mitchell, 21 Md. 244; Chase *v.* Lockerman, 11 Gill & J. 185; Estate of Woodworth, 31 Cal. 595; Elliott *v.* Carter, 9 Gratt. 541; Cranmer *v.* McSwords, 24 W. Va. 594. As to the order of liability and abatement of legacies, see also Vol. II. pp. 661 *et seq.*, *ubi supra.*

Personal property—How applied. In applying personal property to the payment of debts, that which is not specifically bequeathed, inclusive of the general residue, is first liable. Whitehead *v.* Gibbons, 2 Stockt. 230; Nash *v.* Smallwood, 6 Md. 394; Wilcox *v.* Wilcox, 13 Allen 252; Murdoch's Appeal, 31 Pa. St. 47; McGlaughlin *v.* McGlaughlin, 24 Pa. St. 22; Shaw *v.* McBride, 3 Jones Eq. 173. Personal property charged with debts is liable in the following order: 1, undisposed personalty: 2, residuary; 3, general legacies; 4, specific legacies. Edmunds *v.* Scott, 78 Va. 720. General legacies abate before specific, Halsey *v.* Patter-

son, 10 Stew. (N. J.) 445; Brainerd *v.* Cowdrey, 16 Conn. 1; Chase *v.* Lockerman, 11 Gill & J. 185; Moss *v.* Helsley, 60 Tex. 426; Estate of Barclay, 10 Pa. St. 387; Perry *v.* Maxwell, 2 Dev. Ch. 488; especially where the specific legacies are given in lieu of other claims which the legatee had against the testator. Stuart *v.* Carson, 1 Desaus. 500; White *v.* Green, 1 Ired. Eq. 45. But see Snow *v.* Callum, 1 Desaus. 542. And demonstrative legacies are ranked, as far as the designated fund goes, as specific. Estate of Barclay, 10 Pa. St. 387; Cryder's Appeal, 11 Pa. St. 72; Wilcox *v.* Wilcox, 13 Allen 252. And where there is a devise of land to A. encumbered by ground rents, and other devises to executors to apply rents to payment of annuities, taxes, ground rents, and debts, and to sell one parcel two years after the widow's death, the surplus of rents to be applied to extinguish the ground rents, and the proceeds of sale, *with the residue*, to the payment of certain legacies, these legacies become residuary, and abate before the bequest for extinguishment of ground rents. Murdoch's Appeal, 31 Pa. St. 47.

General legacies, as between themselves, will abate *pro rata*, Colbert *v.* Daniel, 32 Ala. 314; including as such the deficiency in a demonstrative legacy after exhausting the fund designated, Armstrong's Appeal, 63 Pa. St. 312; or a legacy in trust. Bancroft *v.* Bancroft, 104 Mass. 226. Under the Revised Statutes legatees (or devisees) are only required to contribute *pro rata* to the payment of debts, irrespective of the insolvency of other legatees (or devisees) and their consequent failure to contribute, and if they pay the share of such others, they can only be subrogated to the rights of the creditors against such others by taking an assignment of the claim. Wilkes *v.* Harper, 2 Barb. Ch. 338. See too, Schermerhorn *v.* Barheydt, 9 Paige 43.

But other general legacies cannot call for contribution upon a legacy in lieu of dower, the widow being considered a purchaser in such case, Lord *v.* Lord, 23 Conn. 327; Hubbard *v.* Hubbard, 6 Met. 50; Williamson *v.* Williamson, 6 Paige 305; McGlaughlin *v.* McGlaughlin, 24 Pa. St. 22; Stuart *v.* Carson, 1 Desaus. 500; unless so expressed by the will. Orton *v.* Orton, 3 Abb. App. Dec. 411. As to such legacies, and legacies for valuable consideration, see Vol. II. p. 670. In some states a legacy in lieu of dower takes precedence of specific bequests and devises. Addison *v.* Addison, 44 Md. 182. And see Calder *v.* Curry, 17 R. I. 610. So, although it is not expressly in lieu of dower, where the widow is required by statute to make her election. Borden *v.* Jenks, 140 Mass. 562.

So, if the personal estate specifically bequeathed be taken for the payment of debts, the whole must be taken *pro rata*. White *v.* Beattie, 1 Dev. Eq. 87; White *v.* Green, 1 Ired. Eq. 45; Biddle *v.* Carraway, 6 Jones Eq. 95; with no distinction between that which is directly and absolutely given and that which is bequeathed to one for life with remainder in fee to another. Laurens *v.* McGrath, 1 Rich. Eq. 296. So too, among themselves specific and demonstrative legacies abate *pro rata*. Estate of Hallowell, 23 Pa. St. 223; Dugan *v.* Hollins, 11 Md. 41; Everitt *v.* Lane, 2 Ired. Eq. 548.

Personalty before realty. "The personal estate is the first and primary fund for the payment of debts." Kent, Ch., in McKay *v.* Green, 2 Johns. Ch. 66; Gore *v.* Brazier, 3 Mass. 523; Hawley *v.* James, 5 Paige 318; Livingston *v.* Newkirk, 3 Johns. Ch. 312; Schermerhorn *v.* Barheydt, 9 Paige 29; Bane *v.* Wick, 14 O. St. 505; Estate of

Walker, 3 Rawle 241; Scott *v.* Morrison, 5 Ind. 551; Clarke *v.* Henshaw, 30 Ind. 144; Newcomer *v.* Wallace, Id. 216; McCullom *v.* Chidester, 63 Ill. 477; Diversey *v.* Johnson, 93 Ill. 547; Will of Brant, 40 Mo. 266; Mitchell *v.* Mitchell, 3 Md. Ch. Dec. 71; Chase *v.* Lockeman, 11 Gill & J. 185; Stevens *v.* Gregg, 10 Id. 143; Wyse *v.* Smith, 4 Id. 295; Hoye *v.* Brewer, 3 Id. 153; Post *v.* Mackall, 3 Bland Ch. 486; Tessier *v.* Wyse, Id. 28; Henry *v.* Graham, 9 Rich. Eq. 100; Hull *v.* Hull, 3 Id. 65; Estate of Woodworth, 31 Cal. 395; Dunlap *v.* Dunlap, 4 Desaus. 305; Haleyburton *v.* Kershaw, 3 Id. 105; Johnson *v.* Farrell, 64 N. C. 266; Quinby *v.* Frost, 61 Me. 77; Elliott *v.* Carter, 9 Gratt. 541; Estate of Wisner, 20 Mich. 442; Magruder *v.* Carroll, 4 Md. 335; Whitehead *v.* Gibbons, 2 Stockt. 230; Keene *v.* Munn, 1 C. E. Gr. 398; Thomas *v.* Thomas, 2 Id. 356; Slack *v.* Emery, 3 Stew. (N. J.) 458; Biddle *v.* Carraway, 6 Jones Eq. 95; Shaw *v.* McBride, 3 Id. 173; Elliott *v.* Posten, 4 Id. 433; Drinkwater *v.* Drinkwater, 4 Mass. 354; Dean *v.* Dean, 3 Id. 258; Simmons *v.* Drury, 2 Gill & J. 32; Cornish *v.* Willson, 6 Gill 299; Richardson *v.* Inglesby, 13 Rich. Eq. 59; Clinefelter *v.* Ayres, 16 Ill. 329; Hewes *v.* Dehon, 3 Gray 205; Ruston *v.* Ruston, 2 Yeates 54; Laurens *v.* Read, 14 Rich. Eq. 245. See too, American note, p. *1584, *ubi supra.* This is true as between general legacies and specific devises, Risk's Appeal, 110 Pa. St. 171; Wilson's Appeal, 15 Phila. 528; Dugan *v.* Hollins, 11 Md. 41; Lanier *v.* Griffin, 11 S. C. 565; Diversey *v.* Johnson, 93 Ill. 547; or general legacies and a residuary devise, Humes *v.* Wood, 8 Pick. 478; unless the legacies are charged on real property. Lupton *v.* Lupton, 2 Johns. Ch. 614. A charge may, however, be implied, *e. g.*, from blending the residuary real and personal property in a common fund. As to charges express and implied, see last preceding note, Vol. III. p. 190. So, where an executor who is both a devisee and a residuary legatee is directed by the testator to pay the debts, he has no right of contribution against other devisees or legatees. Flanders *v.* George, 55 N. H. 486.

Legacies that have been paid in full are not liable to contribute to other legacies lost by the executor's default, where the personal property originally in his hands was sufficient for all. Sims *v.* Sims, 2 Stockt. 161; Lupton *v.* Lupton, 2 Johns. Ch. 614. But the rule is otherwise as to contribution for payment of debts, made necessary by waste of assets on the executor's part. Stuart *v.* Kissam, 2 Barb. 493; Lupton *v.* Lupton, *ubi supra;* Matter of Bingham, 127 N. Y. 296. But if the personal property at first sufficient is afterward squandered by sufferance of the creditor, he cannot look to the land. Goodhue *v.* Barnwell, Rice 240. And if personal assets are wasted, the remedy of the creditor is on the official bond of the executor or administrator. Wyse *v.* Smith, 4 Gill & J. 295. If, however, the heir has participated in the devastavit, he cannot require the court to exhaust his remedy on the bond before proceeding against the lands. Watts *v.* Taylor, 80 Va. 627. And where an executor has paid a debt in disregard of the directions of the will, he cannot call upon the real estate to reimburse him after the personalty, which was originally sufficient to pay debts, has been lost. Feemster *v.* Good, 12 S. C. 573.

On the other hand, undevised real estate will be subjected to debts before specific legacies, Warley *v.* Warley, 1 Bail. Eq. 397; Brown *v.* James, 3 Strobh. Eq. 24; Spraker *v.* Van Alstyne, 18 Wend. 200; Alexander *v.* Worthington, 5 Md. 471; or before general legacies, Hope *v.* Wilkinson, 14

Lea 21; Douglass *v.* Baker, 15 Lea 651; and notwithstanding a general direction to pay debts out of the first moneys received. Douglass *v.* Baker, *ubi supra.* And a direction to convert the real estate for the payment of debts and legacies is not to be executed if the personalty not specifically bequeathed is sufficient. McCarty *v.* Terry, 7 Lans. 237. As to the effect of a charge on lands as an exoneration of the primary fund, see the preceding note, Vol III. p. 187; see also 2 Jarm. on Wills 493.

Real property—How applied. If it becomes necessary to sell the land for the payment of debts, the order of liability will be: first, the residuary devise; second, the lands descended; third, the lands specifically devised, Hays *v.* Jackson, 6 Mass. 149; Anderson *v.* Anderson, 4 Stew. (N. J.) 560; Crumley *v.* Deake, 8 Baxt. 361; although the will directed the executor to pay all debts and incumbrances on lands "whether specifically devised or not." Anderson *v.* Anderson, *ubi supra.* Descended lands cannot call on devised lands to contribute. Livingston *v.* Livingston, 3 Johns. Ch. 152; Livingston *v.* Newkirk, Id. 312. So, if residuary lands are taken by the widow for her dower (as for debt), the residuary devisee has no claim for contribution against specific devisees. Blaney *v.* Blaney, 1 Cush. 107. So lands descended are liable before lands charged with the debts and specifically devised, Adams *v.* Bracket, 5 Met. 280; Lee, Appellant, 18 Pick. 288; Hall *v.* Hall, 2 McCord Ch. 269; Stires *v.* Stires, 1 Halst. Ch. 224. Where descended and devised lands are sold for the payment of debts, and personal property afterward comes to the hands of the executor, it forms a fund representing the devised lands which have been sold, and the devisee of such lands is entitled to subrogation. Graham *v.* Dickinson, 3 Barb. Ch. 169.

Among specific devises all must contribute *pro rata*, Livingston *v.* Livingston, *ubi supra;* Livingston *v.* Newkirk, *ubi supra;* Floyd *v.* Floyd, 29 S. C. 102; Gallaher *v.* Redmond, 64 Tex. 622; including a devise in lieu of dower, Hinson *v.* Ennis, 81 Ky. 368; but after deducting a legacy charged on one of the devises. Estate of Hallowell, 23 Pa. St. 223. But where the executor is a devisee, and the necessity for sale is due to his maladministration, his share will be first applied. Redd *v.* Davis, 59 Ga. 823. So, where one of the heirs is the principal debtor (the intestate being his surety), his share is to be applied before that of the other heirs. Meador *v.* Meador, 88 Ky. 217. Where two pieces of land are separately devised, one to be sold and the proceeds to be divided between testator's daughters "after deducting" $300 for three legacies to grandchildren, and there is no personal property, both pieces of land are equally liable for the payment of debts, and must contribute to restore the $300 fund misappropriated for the debts to the exclusion of the demonstrative legacies to the grandchildren. Estate of Barclay, 10 Pa. St. 387. But where one farm is to be sold at once for the payment of certain legacies, and the other farm is to be sold, but no time specified, and the proceeds of it are only to be applied to the legacies if the first fund is insufficient, the latter farm is liable for debts before the other, and even before surplus proceeds of the other, after payment of the legacies. Cryder's Appeal, 11 Pa. St. 72. Where lands specifically devised and not charged are taken for debts, although they are chargeable in proportion to their value, the deficiency on the sale of one parcel must be made up out of the others. Martin *v.* Cullen, 3 Stew. (N. J.) 426.

Specific legacies and devises. In most of the United States, as in Eng-

land, specific legacies and devises are applied *pro rata* to the payment of debts, Hubbell *v.* Hubbell, 9 Pick. 560; Farnum *v.* Bascom, 122 Mass. 282; Langstroth *v.* Golding, 14 Stew. (N. J.) 49; Shreve *v.* Shreve, 2 C. E. Gr. 487; Thomas *v.* Thomas, Id. 358; Cryder's Appeal, 11 Pa. St. 72; Armstrong's Appeal, 68 Pa. St. 312. Estate of Mason, 1 Pars. Eq. 129; Estate of Woodworth, 31 Cal. 595; Maybury *v.* Grady, 67 Ala. 147; Will of Brant, 40 Mo. 266; including demonstrative legacies as specific to the extent of the designated fund, Armstrong's Appeal, 68 Pa. St. 312; and including land devised and a pecuniary legacy charged on it. Estate of Hallowell, 23 Pa. St. 223. So, where the whole estate is charged with the debts. Shreve *v.* Shreve, 2 Stockt. 385; Elliott *v.* Carter, 9 Gratt. 541. But see Livingston *v.* Newkirk, 3 Johns. Ch. 312; Livingston *v.* Livingston, 3 Johns. Ch. 148. But the rule is confined to such debts as are payable out of lands (in this case specialty debts). Chase *v.* Lockerman, 11 Gill & J. 185. In other states specific legacies abate before specific devises, McFadden *v.* Hefley, 28 S. C. 317: Warley *v.* Warley, 1 Bail. Eq. 397; Lloyd *v.* Lloyd, 10 Rich. Eq. 469; Edmunds *v.* Scott, 78 Va. 720; Foster *v.* Crenshaw, 3 Munf. 514; McCampbell *v.* McCampbell, 5 Litt. 97; Rogers *v.* Rogers, 1 Paige 188; S. C. 3 Wend. 503; Ferguson *v.* Broome, 1 Bradf. 10; Skidmore *v.* Romaine, 2 Bradf. 122; but not before lands devised by residuary devise, McMullin *v.* Brown, 2 Hill Ch. 463; even though the specific bequest be charged with the debts, the residue not being exonerated. Harrison *v.* Haskins, 2 Patt. & H. 388.

Marshaling of assets. A testator has the right to prescribe a law for the disposition of his estate. Brown *v.* James, 3 Strobh. Eq. 24. He may confine an annuity to a particular fund (such as rents accruing in another state), and leave the personalty at his domicil as a fund for the payment of general legacies. Estate of Radovich, 54 Cal. 540.

In marshaling assets legacies charged on land are considered as land. McCampbell *v.* McCampbell, 5 Litt. 97. Where personal property is to be converted into real property by direction of the testator, it will be considered as such in marshaling assets, and will be liable for debts only after specific bequests of personalty. Downing *v.* Marshall, 1 Abb. App. Dec. 525.

It seems that by the administration laws of Missouri the marshaling of assets in equity has been done away with, and all claims against the estate of a decedent must be classified into one of six classes, and that no debt of a subsequent class can be paid until all those of preceding classes are satisfied. Titterington *v.* Hooker, 58 Mo. 593. See too, Jillett *v.* Union National Bank, 56 Mo. 304. And the same rule seems to prevail in Iowa. Hart *v.* Jewett, 11 Ia. 276; Brewster *v.* Kendrick, 17 Ia. 479; Noble *v.* Morrey, 19 Ia. 509; Willcox *v.* Jackson. 51 Ia. 296.

Marshaling for creditors. As between a legatee for life and creditors of the estate, the latter have the right to insist that their debts be paid out of income of the estate before any part thereof be paid to the legatee. Merryman *v.* Long, 49 Md. 540. The assent of an executor to a legacy can never defeat the right of a creditor to pursue, in a court of equity, the assets of a testator in the hands of a legatee, if necessary for the payment of testator's debts. Dunn *v.* Amey, 1 Leigh 465. But a creditor may, by his own laches, lose his right of recourse to the real property, Groot *v.* Hitz, 3 Mackey 247; or his right to insist on a debt secured by a prior lien looking to another fund for

part payment. Horning's Appeal, 90 Pa. St. 388.

Where specialty creditors, who are alone entitled at common law to resort to the realty, are paid out of the personal property, simple contract creditors do not thereby acquire a right to have the assets marshaled, and to have their debts paid *pro tanto* out of the realty, Pugh *v.* Russell, 27 Gratt. 789; nor because taxes due the state have been paid out of the personalty. Id.

Marshaling for legatees. If creditors choose to enforce payment from the personal representatives of their debtor, instead of suing (as they may do) the heir in respect of any real estate which may have descended to him, and thereby withdraw the personalty from the claim of specific or pecuniary legatees, the courts will marshal the assets in favor of such legatees by placing them in the room of the creditors, as it respects their claim on the descended lands. 3 Jarm. on Wills 530; Theobald on Wills 463; Durham *v.* Rhodes, 23 Md. 233; Dugan *v.* Hollins, 11 Md. 41; Mitchell *v.* Mitchell, 21 Md. 244; Brooks *v.* Dent, 1 Md. Ch. Dec. 523; Stires *v.* Stires, 1 Halst. Ch. 224; Livingston *v.* Newkirk, 3 Johns. Ch. 312.

Thus, where a testator directed that his real and personal property should be kept together, under the management of his executor, "*until his just debts be paid,*" and disposed of the same thereafter, and subsequently to the execution of his will purchased land (which descended to the heir) and mortgaged such land for the purchase money, it was held that as between the heir and legatee the property passing under the will was the primary fund for the payment of debts, including the debt for which the after-acquired real estate was mortgaged. Ford *v.* Gaithur, 2 Rich. Eq. 270. "It is a general rule that any fund which is not disposed of by a testator shall be applied to the payment of debts before property which is given by the Will can be subjected." Pearson, C. J., in Wynns *v.* Burden, 5 Jones Eq. 377, 378. So too, Elliott *v.* Posten, 4 Id. 433.

So, if an annuity is charged on both real and personal property, and there are legacies besides, but no devises, the personal property is first liable, if sufficient for annuity and legacies; but if not, the assets will be marshaled and the legatees subrogated to the rights of the annuitant against the real property, if the annuity has been paid out of the personalty. Allen *v.* Allen, 3 Wall. Jr. C. C. 289. So, if the testator authorizes any of his lands to be sold for the payment of his debts, and devised lands are so applied before the personal property, devisees and their judgment creditors may be subrogated to the rights of the creditors against the personalty. Morris *v.* Mowatt, 2 Paige 586.

In like manner assets will be marshaled in favor of a devisee whose land is taken by the widow on her election against the provisions of the will, Gallagher's Appeal, 87 Pa. St. 200; or in favor of a specific legatee of bank stock, whose stock has been taken to pay arrears of installments assessed, as against other stock in the hands of the executor, Witters *v.* Sowles, 25 Fed. Rep. 168; or against the residuary legatee, Robards *v.* Wortham, 2 Dev. Eq. 173; or to reimburse the executor for advances made and expended by him on decedent's lands, where the money is afterward required for the testator's debts, Ferris *v.* Van Vechten, 9 Hun 12; or the advances were made for particular purposes which were expressly charged on the land. Estate of Piper, 11 Phila. 141.

Marshaling between legatees and devisees. Where a debt is charged on personal property and a legacy is taken to pay it, the legatee may be subrogated to the creditor's rights against the land.

Pulliam *v.* Pulliam, 10 Fed. Rep. 53. So, if the lands of one devisee are sold to pay a debt expressly charged on another devise. Cranmer *v.* McSwords, 24 W. Va. 594. On the other hand, the devisee of lands which are charged with a legacy may file his bill to compel recourse for its payment, in the first instance to the residuary personal property, or to the bond of the executor as residuary legatee. Amherst College *v.* Smith, 134 Mass. 543.

But assets will not be marshaled between devisees or legatees having equal and opposing rights to protect. Thus, where land is devised in trust for the widow for life, and after her death to grandchildren, the widow cannot demand that a part of the *corpus* of the estate be sold to pay debts in order that she may enjoy all the rents of the leaseholds. Merryman *v.* Long, 49 Md. 540. In such case the rents of leaseholds are assets in the hands of the executor for the payment of debts. Id. So too, the hire of slaves, or interest on a bond. Edelen *v.* State, 4 Gill & J. 277. So, where a testator left lands and a sufficiency of personal estate to pay debts, but afterward, by the emancipation of his slaves, the personal property became insufficient, it was held that, as between the claimants of the money legacies and the devises, the loss must fall upon the legatees. Johnson *v.* Farrell, 64 N. C. 266. But see, *contra*, Lake *v.* Copeland, 82 Tex. 464, where one of several devises failed through defect of testator's title.

Recourse to second fund—Collateral security. Wherever a party has a claim upon one fund only, and another upon more than one, the court will so arrange the funds as to let in as large a number of claims as possible, and if the person having the several funds should in violation of this rule have resorted to the fund common to himself and the person having no other fund, the court will place that person in his room to the extent to which the common fund has been so applied. 3 Jarm. on Wills 535; Rice *v.* Harbeson, 63 N. Y. 498; Durham *v.* Rhodes, 23 Md. 233; Post *v.* Mackall, 3 Bland Ch. 486; Pugh *v.* Russell, 27 Gratt. 789; Southworth *v.* Parker, 41 Mich. 198; Cooper *v.* Bigly, 13 Mich. 463; Graves *v.* Howard, 3 Jones Eq. 302; Mollan *v.* Griffith, 3 Paige 402.

In like manner a creditor holding collateral security will, if the estate is insolvent, be generally required to exhaust his security and allowed to prove his claim against the general estate only for the balance then remaining due. Croswell on Exrs. § 417; Woerner on Admn. § 408; Amory *v.* Francis, 16 Mass. 308; Bristol County Savings Bank *v.* Woodward, 137 Mass. 412; Smith *v.* Crater, 16 Stew. (N. J.) 639; Masonic Savings Bank *v.* Bangs, 84 Ky. 135; Bank *v.* Alexander, 85 N. C. 352; Minton *v.* Eldridge, 3 Head 361; Wheat *v.* Dingle, 32 S. C. 473. So, by statute, in *Connecticut* (1888 G. S. § 590), *Maine* (1883 R. S. 556, § 7), *New Hampshire* (1878 G. L. 467, § 10).

The formal presentment of the claim as a debt is no waiver of the collateral, Tuttle *v.* Robinson, 33 N. H. 104; Drew *v.* McDonald, 60 N. H. 480; although, in Massachusetts, the presentment should be for the estimated deficiency. Haverhill Loan &c. Association *v.* Cronin, 4 Allen 141. In other states the creditor is allowed to prove against the general estate for the full amount of his debt, looking to his collateral security for an additional dividend. Story Eq. Jur. § 504 b; Estate of McCune, 76 Mo. 200; Edmonson *v.* Phillips, 73 Mo. 57.

*BOOK THE SECOND.

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR, IN RESPECT OF THE ACTS OF THE DECEASED; AND OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR, IN RESPECT OF HIS OWN ACTS.

CHAPTER THE FIRST.

OF THE LIABILITY OF THE EXECUTOR OR ADMINISTRATOR IN RESPECT OF THE ACTS OF THE DECEASED.

SECTION I.

The general question as to what Claims upon the Deceased survive against the Executor or Administrator.†

In matters of contract:

The general rule has been established from very early times, with respect to such personal claims as are founded upon any obligation, contract, debt, covenant, or other *duty* that the right of action, on which the testator or intestate might have been sued in his lifetime, survives his death, and is enforceable against his executor or administrator (*a*). *Therefore, it is clear that the executors or administrators are answerable, as far as they

† See American note on p. *1660, *ubi infra.*

(*a*) Touchst. 482. 1 Saund. 216, *a.* note (1) to Wheatley *v.* Lane. It was said by Willes, C. J., in Sollers *v.* Lawrence, Willes, 421, that "actions on the case for all sorts of debts and duties are now daily brought against executors, though this was formerly doubted: But the law has been now so settled at least 150 years." And therefore, notwithstanding the rule *actio personalis moritur cum persona,* if an injury has been done to personal property of the plaintiff for relief arising out of which *assumpsit* could have been brought as in the case of actions against carriers and bailees, the executors of the deceased may be sued; that is to say, the executor may be sued on the obligation implied by law on which *assumpsit* would have lain against his testator. Phillips *v.* Homfray, 24 C. D. 439. Batthyany *v.* Walford, 36 C. D. 269.

have assets, for debts of every description due from the deceased, either debts of record, as judgments, statutes, or recognizances; or debts due on special contract, as for rent, or on bonds, covenants, and the like, under seal; or debts on simple contract, as notes unsealed, and promises not in writing, either expressed or implied (*b*). So an executor may be sued by the lord of a manor for a relief due from the testator (*c*).

In the case of Eton College *v.* Beauchamp (*d*), there was a rent issuing out of lands, and the tertenant died, leaving arrears due to Eton College; And it was decreed that though the person of the tertenant was not chargeable with the rent at law, but only the land by way of distress, yet his executor should pay the arrears as far as he had assets. So it is said, that where a man binds himself and his heirs, and leaves real assets, the heir, taking the profit, becomes so far a debtor, that his executor shall be charged (*e*).

In the case of Wilson *v.* Tucker (*f*), an action was sustained against the executor of an attorney for negligence by the deceased, in transacting the business of the plaintiff.

And there is no difference between a promise to pay a debt certain, and a promise to do a collateral act, which is uncertain, and rests only in damages, as a promise by the testator to give such a fortune with his daughter, to deliver up such a bond, &c.: For, wherever in those cases the testator himself is liable to an action, his executors shall be liable also (*g*).

*It must be observed, however, that certain *forms* of action do not, at the common law, survive against the executor or administrator, as will hereafter be shown in the investigation of the subject of Remedies generally (*h*): But other actions were substituted in their room upon the very same cause which do survive and lie against the executor or administrator (*i*).

(*b*) Bac. Abr. Exors. (P.) 1 Com. Dig. Admon. (B. 14).

(*c*) St. John *v.* Bawdripp, Noy, 43. Com. Dig. Admon. (B. 14).

(*d*) 1 Chanc. Cas. 121.

(*e*) Wentw. Off. Ex. 249, 256, 14th edit. Henningham's case, Dyer, 344, *b*. As to the power of an executor or administrator, liable as such to the rent, covenants, or agreements contained in any conveyance on chief rent, or rent-charge granted or assigned to or made and entered into with the testator or intestate, to escape future liability thereunder, see the provisions of Lord St. Leonards' Act, 22 & 23 Vict. c. 35, s. 28.

(*f*) 3 Stark. N. P. C. 154. See also Dutton *v.* Tayley, 18 Hill, MS. 285.

(*g*) Bac. Abr. Exors. (P.) 2.

(*h*) *Infra*, Pt. v. Bk. II. Ch. I.

(*i*) Hambly *v.* Trott, Cowp. 375, by Lord Mansfield.

[*1595]

The executors or administrators so completely represent their testator or intestate, with respect to the liabilities above mentioned, that every bond, or covenant, or contract of the deceased includes them, although they are not named in the terms of it (*k*): for the executors or administrators of every person are implied in himself (*l*).

In Harwood *v.* Hilliard (*m*), a sale was to be made of a parcel of land, and it was agreed, between the plaintiffs and the defendant's testator, that if it should not produce a certain sum, then they should repay each other proportionably to the abatement; and the defendant's testator covenanted for himself and his executors, to pay his proportion to the plaintiffs, so as the plaintiffs gave him notice in writing of the said sale, by the space of ten days; but it was not said, that such notice was to be given to his executors or administrators; And the whole court agreed, that, as the covenant ran in interest and charge, the executor was bound to pay the testator's proportion, although the notice was given to the executor and not to the testator.

It is clear, also, that in many cases a liability may accrue against the executor or administrator, after the death of the testator or intestate, upon a contract made in his lifetime although the executor or administrator be not named therein: Thus the executor is liable upon a bond which becomes due, or a note payable, subsequently to the death of the testator (*n*). *So where a man covenanted that A. should serve B. as an apprentice for seven years, and died, it was holden, that if A. departs within the term, a writ of covenant lies against the executor of the covenantor, without naming him (*o*). So if A. is bound to build a house for B. before such a time, and A. dies before the time, his executors are bound to perform this contract (*p*). And in cases of this kind the executors will be liable even

(*k*) Wentw. Off. Ex. c. 11, pp. 239, 243, 14th edit. Bradbury *v.* Morgan, 1 H. & C. 249, 255.

(*l*) By Lord Macclesfield in Hyde *v.* Skinner, 2 P. Wms. 197.

(*m*) 2 Mod. 268.

(*n*) Toller, 463.

(*o*) Bro. Covenant, 12. Bac. Abr. Exors. (P.) 1.

(*p*) Quick *v.* Ludborrow, 3 Bulstr. 30, by Coke, C. J. In the case of Gordon *v.* Calvert, 2 Sim. 253. 4 Russ. Chanc. Cas. 581, A. on taking B. as a clerk, took a bond, from him and a surety, to secure his duly accounting for his receipts: No time was fixed for the continuance of the service, but it was to be determinable at the option of either party: The surety died: His executrix gave notice to that she should no longer consider herself liable on the bond: A. read the notice to B., and required him to execute a new bond, with another surety, which was done: Then

[*1596]

where the heir is named, and the executors are not named, in the contract (*q*).

Hence, it appears, that executors or administrators more actually represent their testator or intestate, than the heir does the ancestor: for if a man binds himself, his executors or administrators are bound, though not named; but it is not so of the heir by the common law, however large an amount of real assets may have descended to him (*r*): but now by 3 & 4 Wm. IV. c. 104, real estate of a deceased owner is chargeable with all liabilities which may arise out of obligations entered into by him during his life (*s*).

If contract is personal to testator, no liability of executor.

The proposition, however, that executors or administrators are liable upon every contract of the deceased, although they be not named, must be understood as not extending to cases where the contract is *personal* to the testator or intestate: for *in such instances no liability attaches upon the executors or administrators, unless a breach was incurred in the lifetime of the deceased (*t*). Thus, if an author undertakes to compose a work, and dies before completing it, his executors are discharged from this contract: for the undertaking is merely personal in its nature, and, by the intervention of the contractor's death, has become impossible to be performed (*u*). So a

B. died, and deficiencies were found in his accounts, subsequent to the notice: And it was held that the executrix of the surety had no equity to support an injunction to restrain an action on the bond.

(*q*) Williams *v.* Burrell, 1 C. B. 402.

(*r*) Co. Lit. 209, *a.* Wentw. Off. Ex. c. 11, 239, 240, 14th edit.

(*s*) Hamer's Devisees' case, 2 De G. M. & G. 366. *Ante*, p. *1560, note (*o*).

(*t*) Hyde *v.* the Dean of Windsor, Cro. Eliz. 533. Siboni *v.* Kirkman, 1 M. & W. 418, 423, *per* Parke, B. An action for breach of promise of marriage, where no special damage is alleged, does not survive against the personal representatives of the promisor. The special damage which would cause the right of action to survive must be damage to the property, and not to the person, of the promisee, and must be within the contemplation of both parties at the date of the promise, and the action can be brought against the executors for such special damage only, and not for general damages: Finlay *v.* Chirney, 20 Q. B. D. 494.

(*u*) Marshall *v.* Broadhurst, 1 Tyrwh. 349, by Lord Lyndhurst. In Wentworth *v.* Cock, 10 A. & E. 45, Patteson, J., said that there was a case at Liverpool where a contract to build a lighthouse was held to be personal, on the ground of its being a matter of personal skill and science. So a contract to play a piano at a concert has been held to be one requiring personal skill, and to be conditional on the contractor being well enough to perform: Robinson *v.* Davison, L. R. 6 Exch. 269, 274.

covenant by a master for the instruction of his apprentice is personal to the master, and his executors are not liable upon it (*v*).

On a covenant that in consideration of a weekly payment to A. and his executors for a term certain A. shall not exercise a particular trade, the executors of A. are not bound to abstain from exercising it after his death (*x*).

So it is said, that if a lessee for years covenants for himself to repair the houses demised, omitting other words, he is bound to repair only during his life, and the executors or administrators are not bound (*y*). And it is also said, that if a lessor covenants, for himself only, to discharge the lessee of *all quit-rents out of the land, this covenant is only personal, and will bind the covenantor only during his life (*z*). But if in these cases the words "during the term" be added in the covenant, as on a covenant by a lessee for himself to repair the houses during the term, or on a covenant by a lessor for himself to discharge the lessee of all quit-rents during the term: in these cases, it appears, the executors and administrators also will be charged after his death (*a*).

In Wentworth *v.* Cock (*b*), the plaintiffs had entered into an agreement with one Cock to supply him with a certain quantity of slate immediately; and with a certain other quantity, monthly, at a fixed price; and with any further quantity, monthly, that he might require: He engaged to receive the slate, not exceeding 200 tons per month, and the agreement was to be in force till January 1st, 1838: An action having been brought against his administrator, for refusing to receive slate sent, in pursuance of the contract, after his death, and before January 1st, 1838, it was contended that the contract was personal to the deceased, and was not obligatory on his representatives: But the Court of Queen's Bench held that the plaintiff might well sue the administrator: And Lord Denman said, it was like any ordinary case of goods ordered by a testator, which the executor must receive and pay for: And Littledale, J., observed, that the administrator was bound to pay damages, out of the assets, if he

(*v*) Baxter *v.* Burfield, Bott. P. L. pl. 696, 6th edit. S. C. 2 Stra. 1266. *Infra*, p. *1649.

(*x*) Cooke *v.* Colcraft, 2 W. Bl. 856. 3 Wils. 380.

(*y*) Touchst. 178: but see Wentw. Off. Ex. p. 250, 14th edit. *contra*.

(*z*) Touchst. 178. Ingery *v.* Hyde, Dyer, 114, *a.*: but see Wentw. Off. Ex. *ubi supra*.

(*a*) Touchst. 178, 482. See also Williams *v.* Burrell, 1 C. B. 402.

(*b*) 10 A. & E. 42.

did not take the contract upon himself. In Cooper *v.* Jarman (*c*), where a person contracted with a builder to erect a house on a piece of freehold land belonging to him, and died intestate before the house was finished, it was held by Lord Romilly, M.R., that the heir-at-law was entitled to have the house finished at the expense of the personal estate of the intestate.

But it must be borne in mind that the authority of an *agent is revoked by the death of his principal: consequently the agent cannot, generally speaking, sue the executor of the principal in respect of services as agent after his death, though performed in pursuance of a contract made with him in his lifetime. Thus, in Campanari *v.* Woodburn (*d*), where A. had agreed with B. that he would endeavor to sell a picture belonging to B., and that if he succeeded in selling the same, B. should pay him 100*l.*; and B. died before his picture was sold; it was held that A. could not recover the 100*l.* from B.'s executor.

It must here be observed, that in the case of Perrot *v.* Austin (*e*), it is said to have been resolved by the court that if one covenants that his executors shall pay 10*l.*, no action lies for this against them. But Lord Mansfield, in Plumer *v.* Marchant (*f*) said that Perrot *v.* Austin was an extraordinary case, and there is a query in the very report (*g*). And in Powell *v.* Graham (*h*), it was held that an action might be sustained against an executor, upon a promise by the testator, that his executor should pay to the plaintiff the sum of 20*l.* in consideration that the plaintiff would continue in the service of the testator till his death; and that it was not necessary to aver any promise by the executor to pay it.

(*c*) L. R. 3 Eq. 98.

(*d*) 15 C. B. 400.

(*e*) Cro. Eliz. 382.

(*f*) 3 Burr. 1383.

(*g*) In fact it appears from the statement of the case in Wentw. Off. Ex. p. 250, 14th edit., that the decision of Perrot *v.* Austin was merely as to the form of action. "In some cases," says that author, "no action of debt lieth upon a covenant to pay money; as if A. covenant that his executor shall within a year, or such a time after his death, pay 10*l.* to B.; now for that no action of debt was maintainable against A. himself, it lieth not against his executor, but only an action of covenant; as was held in the late Queen's time." See Randall *v.* Rigby, 4 M. & W. 132, *per* Parke, B.; and *Ex parte* Tindal, 8 Bing. 402. S. C. 1 M. & Scott, 607, where Tindal, C. J., and Littledale, J., expressed their opinion, in which Lord Brougham concurred, that if a man covenants that his executors shall pay a sum of money after his death, this creates a debt just as much as if he himself had covenanted to pay it.

(*h*) 7 Taunt. 580.

[*1599]

*With regard to the liability of an executor in respect of the tortious acts of the deceased, it was a principle of the common law, that if an injury was done either to the person or property of another, for which *damages* only could be recovered in satisfaction, the action died with the person by whom the wrong was committed (*i*): and at this day (unless the case falls within the statute 3 & 4 Wm. IV. c. 42, s. 2, hereafter to be mentioned) (*j*), where the cause of action is founded upon any *malfeasance or misfeasance*, is a tort, or arises *ex delicto*, such as trespass for taking goods, &c., trover, false imprisonment, assault and battery, slander, deceit, diverting a watercourse, obstructing lights, and in many other cases of the like kind, where the *declaration* imputes a tort done either to the person or property of another, and the *plea* must be not guilty, the rule is *actio personalis moritur cum persona;* and if the person by whom the injury was committed dies, no action of that kind can be brought against his executor or administrator (*k*).

in matters of tort:

*Accordingly, no action lies against an executor or administrator on a penal statute (*l*). So if a man, served with a *subpœna*, and having had his expenses tendered to him, neglects to appear as a witness, and dies, no action lies against his executor or administrator (*m*). Again, if a sheriff, gaoler, or keeper of a prison, suffered one in execution for debt or damages to escape, though hereby the party, at

(*i*) 1 Saund. 216, *a.*, note (1) to Wheatley *v.* Lane. Kirk *v.* Todd, 21 C. D. 484, 489.

(*j*) *Post*, p. *1607.

(*k*) 1 Saund. 216, *a.*, note (1). An action for compensation for losses occasioned by misrepresentations contained in a prospectus of a company is like an action at law for deceit, and is therefore of a personal character, and the estate of a deceased director, not being alleged and proved to have received benefit from the deceit, his executors cannot be made liable to compensate the person who asserts that he has been injured by it: Peek *v.* Gurney, L. R. 6 H. L. 377. In the case of New Sombrero Phosphate Co. *v.* Erlanger, 5 C. D. 73 (affd. 3 App. Cas. 1218), the estate of a deceased member of a syndicate was held liable, on the ground that he was a partner, and that the action therefore did not die with him. Nor can the executors of a deceased director be made liable in any proceeding which is of the nature of an action of negligence (*e.g.* where it is sought to charge them for loss beyond the amount of the money placed in the directors' hands): Overend, Gurney & Co. *v.* Gurney, L. R. 4 Ch. 701. L. R. 5 H. L. 480. It has been held that the executors of a deceased director, not being officials of a company, cannot be proceeded against by summons taken out under the provisions of the 25 & 26 Vict. c. 89, sect. 165 (Companies Act, 1862): Re British Guardian Life Assurance Co., 14 C. D. 335, following Feltom's Executors' case, L. R. 1 Eq. 219.

(*l*) Wentw. Off. Ex. 255, 14th edit.

(*m*) Wentw. Off. Ex. 255, 14th edit.

whose suit the execution was, was entitled not only to an action upon the case against such officer by the common law, but also to an action of debt by the statutes Westm. 2, and 1 Rich. II. c. 12; yet if the officer died, no action lay against his executor for the same; because the suffering the escape was a wrong of the nature of a trespass (*n*). So at the common law, if a man was appointed executor, and committed a *devastavit* and died, the executor of such executor was not liable for the *devastavit*, upon the principle that it was a personal tort in his testator, which died with the person (*o*). But now, by the statute 30 Car. II. c. 7, explained and made perpetual by 4 & 5 Wm. & M. c. 24, s. 12, the executors or administrators of any executor or administrator, whether rightful or of his own wrong, who shall waste or convert to his own use the estate of his testator or intestate, shall be liable and chargeable in the same manner as their testator or intestate would have been if they had been living (*p*).

*In some, however, of the cases above mentioned, a remedy may be had against the executor or administrator in another form: Thus, although, at the common law, an action of trover upon a conversion of the testator dies with him, yet if the goods, &c., taken away, continue still *in specie*, in the hands of the executor or administrator of the wrong-doer, replevin or detinue will lie against such executor or administrator to recover them back (*q*): or trover, laying the conversion to have been by the executor (*r*): or, in case they are sold, an action for money had and received to recover their value (*s*).

(*n*) Anon. Dyer, 271, *a*. Whitacres *v*. Onsley, Dyer, 322, *a*. Perkinson *v*. Gilford, Cro. Car. 540. Bro. Escape, 28 Exors. 100. Execution, 86 Parliament, 80. Wentw. Off. Ex. 254, 14th edit. Berwick *v*. Andrews, Lord Raym. 973, by Lord Holt. Hambly *v*. Trott, 1 Cowp. 375. 1 Saund. 216, *a*. note (1). But debt lies against the executors of a sheriff, &c., upon a judgment obtained against the testator for an escape: See *post*, p. *1614.

(*o*) Sir Brian Tucke's case, 3 Leon. 241. Browne *v*. Collins, 1 Ventr. 292. But he was liable in equity: Price *v*. Morgan, 2 Chanc. Cas. 217.

(*p*) 1 Saund. 219, *d*. note to Wheatley *v*. Lane. Coward *v*. Gregory, L. R. 2 C. P. 153. In the case of Hammond *v*. Gatliffe, Andr. 254, the court were strongly inclined to be of opinion that an executor *de son tort* of an executor *de son tort* is not liable at common law for a *devastavit* committed by the first; and that such an executor is not within the statute of Car. II.; because (as Probyn, J., said) in the first part of the act, executors *de son tort* are not named, though afterward they are expressly mentioned.

(*q*) Le Mason *v*. Dixon, W. Jones, 173, 174. 1 Saund. 217, note (1).

(*r*) Hambly *v*. Trott, 1 Cowp. 373.

(*s*) *Ibid*. 377. 1 Saund. 217, note (1). The only cases outside the statute 3 & 4 Will. IV. c. 42, hereinafter referred

[*1602]

Again, an action on the custom of the realm *against a common carrier is for a tort and supposed crime; and the plea is not guilty; therefore, at the common law, it will not lie against the carrier's executors: But an action of assumpsit will lie against them, upon the very same cause (*t*). So if a man take a horse of another, and bring him back again, an action of trespass will not lie, at the common law, against his executor, though it would against him: but an action for the use and hire of the horse will lie against the executor (*u*). So if a man deals as agent for another without authority, his executor, though he cannot be sued for the tort, may be made liable upon an implied contract (*v*).

So in the case of Perkinson *v.* Gilford (*x*), debt was brought against

to, in which, apart from questions of breach of contract, express or implied, a remedy for a wrongful act can be pursued against the estate of a deceased person who has done the act, appear to be those in which property, or the proceeds or value of property, belonging to another, have been appropriated by the deceased person and added to his own estate or moneys. Where there is nothing among the assets of the deceased that in law or in equity belongs to the plaintiff, and the damages which have been done to him are unliquidated and uncertain, the executors of a wrong-doer cannot be sued merely because it was worth the wrong-doer's while to commit the act which is complained of, and an indirect benefit may have been reaped thereby. The profits, arising from a wrong done by a deceased man, which can be followed against his estate, are only such profits as take the shape of property, or the proceeds or value of property, withdrawn from the rightful owner and acquired by the wrong-doer. See the judgment of Bowen, L.J., and Cotton, L.J., in Phillips *v.* Homfray, 24 C. D. 439, in which case Baggallay, L.J., dissented from the other members of the court, expressing his opinion thus: "The general result of these cases, and of others to the like effect, may be thus stated, that a Court of Equity will give effect to a demand against the estate of a deceased person in respect of a wrongful act done by him, if the wrongful act has resulted in a benefit capable of being measured pecuniarily, and if the demand is of such a nature as can be properly entertained by the Court." *Ibid.* p. 476.

[*1603]

(*t*) Cowp. 375, by Lord Mansfield. S. P. by Sir J. Mansfield, C. J., in Powell *v.* Layton, 2 New Rep. 370.

(*u*) Hambly *v.* Trott, 1 Cowp. 375, by Lord Mansfield.

(*v*) Collen *v.* Wright, 7 E. & B. 301. S. C. in Error, 8 E. & B. 647. So, though the executor of an innkeeper cannot be sued in tort for the loss of a guest's goods (unless under stat. 3 & 4 Will. IV. c. 42, s. 2, *post*, p. *1607), he may be sued on an implied assumpsit: Morgan *v.* Rarey, 2 Fost. & F. 283.

(*x*) Cro. Car. 539. Where an under-sheriff (since deceased) acting as sheriff during the vacancy of the shrievalty, under 3 Geo. I. c. 15, s. 8 (see 50 & 51 Vict. c. 55, s. 25), wrongfully retained the proceeds of an execution, it was held by the Court of Appeal, affirming the Divisional Court, that an action for money had and received was maintain-

the executors of a sheriff, for money which he had levied under a *fi. fa.* and had not paid over: the not paying over the money was a misfeasance as well as a nonfeasance, yet it was determined, that by the receipt of the money, the sheriff became debtor, and that debt might be maintained for it; that is to say, though he was guilty of a breach of his duty as sheriff, and though no action could be maintained for that breach of duty after his death, yet for the money so recovered his executors were chargeable.

Again, at the common law, an action of trespass for mesne *profits cannot be maintained against an executor or administrator (*y*): yet he is, perhaps, liable in an action for use and occupation for the rent up to the day of the demise in the action of ejectment (*z*). But if there has been a recovery in ejectment, it is clear that no action will lie against the executor for use and occupation for the rent subsequent to the day of demise laid in the declaration; because, having treated the holding as founded on trespass, the plaintiff cannot afterward treat it as founded on contract (*a*): And in such instances the simple case of the death of the occupier will not sustain a bill in equity for an account of mesne profits under the head of accident (*b*): However, an account of mesne profits, since the title accrued, was decreed against executors, upon a special ground, that the plaintiff was prevented from recovering in ejectment by a rule of the Court of Law, and by an injunction at the instance of the occupier; who ultimately failed both at law and in equity (*c*): And in the case of Monypenny *v.* Bristow (*d*), the widow of a testator, with the acquiescence of his heir, was let into possession of certain freehold houses, under an erroneous supposition that they passed by the will along with other property, in which a life interest was devised to

able against the executor of the undersheriff by the execution creditors to recover the sum so wrongfully recovered: Gloucestershire Banking Co. *v.* Edwards, 20 Q. B. D. 107. See also Packington *v.* Culliford, 1 Roll. Abr. 921, tit. Exors. H. pl. 2.

(*y*) Pulteney *v.* Warren, 6 Ves. 72, 86. See *per* Bowen and Fry, L.JJ., in Phillips *v.* Homfray, 24 C. D. 439, 458.

(*z*) 6 Ves. 86. Turner *v.* Cameron's Coalbrook Company, 5 Exch. 932.

(*a*) Birch *v.* Wright, 1 Term Rep. 378. See also Pulteney *v.* Warren, 6 Ves. 72, 87; and Bridges *v.* Smyth, 5 Bing. 410. S. C. 2 Moo. & P. 740. However, the mere *bringing* of an ejectment and laying the demise before the time of the rent accruing, is no bar to an action for use and occupation; Cobb *v.* Carpenter, 2 Campb. 14, note to Balls *v.* Westwood: *Secus, semble,* if the ejectment has been served on the lessee: Jones *v.* Carter, 15 M. & W. 718.

(*b*) Pulteney *v.* Warren, 6 Ves. 88.

(*c*) *Ibid.* 72.

(*d*) 2 Russ. & M. 117.

[*1604]

her; and before the error was discovered or her right disputed, she died: On a bill filled by the heir against her personal representative, praying the delivery of title deeds and an account, it was held by Sir J. Leach, M.R., and *afterward by Lord Brougham on appeal, that the suit was maintainable for the rents received during her continuance in possession (*e*).

So an action of waste does not lie, at the common law, against an executor, for waste committed by his testator; it being a tort which dies with the person (*f*): Nor shall an *executor be chargeable for

(*e*) See also Caton *v.* Coles, L. R. 1 Eq. 581.

(*f*) 2 Inst. 302. 2 Roll. Abr. 828, pl. 7. 2 Saund. 252, note to Green *v.* Cole. A bill was brought against the executors of a jointress, to have satisfaction out of assets for permissive waste upon the jointure of the testatrix: But by Cowper, C., "The bill must be dismissed; for here is no covenant that the jointress shall keep the jointure in good repair, and in the common case, without some particular circumstances, there is not remedy in law or equity for permissive waste after the death of the particular tenant:" Turner *v.* Buck, 22 Vin. Abr. p. 523, pl. 9, tit. Waste (s. a.). The produce, proceeds, or value of waste, equitable or legal, committed by a tenant for life, can be followed into the hands of his executors, and retaken from them. If he has wrongly cut timber, the timber or its proceeds or value can be followed. But no action for waste—permissive or voluntary—as such lies against the executors of a tenant for life. By non-repairing a house, or by plowing up ancient meadow, the tenant for life may have indirectly benefited himself or saved his own pocket. But neither law nor equity recognize in this indirect benefit which he may have received any ground for proceedings against his executors: Phillips *v.* Homfray, 24 C. D. 439, 455. The liability of a tenant for life for permissive waste seems to have been for a long time an open question. It was supposed that there was a passage by Lord Coke, 2 Inst. 145, affirming the liability, and Parke, B., in Yellowly *v.* Gower, 11 Exch. 274, 294, says, speaking of permissive waste: "We conceive that there is no doubt of the liability of tenants for term of years, for they are clearly put on the same footing as tenants for life, both as to voluntary and permissive waste, by Lord Coke, 1 Inst. 53." But Kay, J., in Re Cartwright, 41 C. D. 532, points out that Coke's words, 2 Inst. 145, only include permissive waste where there is an obligation to repair; and that in effect he says that where the grantor imposes the obligation to repair, it is waste to allow the property to go out of repair. And the learned judge further refers to the case of Powys *v.* Blagrave, 4 De G. M. & G. 448, where Lord Cranworth, L. C., said that in the case of a tenant for life even legal liability for permissive waste was very doubtful, and decided most certainly that in equity no interference whatever would be made on the ground of permissive waste by a tenant for life. This view was followed by Kay, J., in the above-mentioned case, who expressly held that the estate of a legal tenant for life is not liable for permissive waste, after having had cited to him Davies *v.* Davies, 38 C. D. 499, in which Kekewich, J., held that a tenant

[*1605] [*1606]

the injury done by his testator in cutting down another man's trees: But for the benefit arising to his testator from the sale or value of the trees, he shall (*g*). Accordingly, in Powell *v.* Rees (*h*), it was held that an executor is liable to an action for money had and received by his testator, for coal tortiously taken by him from the plaintiff's land, if the testator had sold it, and received the money: And this although no direct evidence be given of the actual sum received on the sale, if the jury believe the fact of the sale. So Lord Chancellor Cowper held, in the case of The Bishop of Winchester *v.* Knight (*i*), that the lord of a manor might bring a bill for an account of ore dug, or timber cut by the defendant's testator: And his lordship observed, that it would be a reproach to equity, to say, where a man has taken my property, as my ore or timber, and disposed of it in his lifetime, and dies, that in this case I must be without remedy: And his lordship further remarked that it was true, as to the trespass of breaking up meadow, or ancient pasture ground, it died with the person; but as to the property of the ore or timber, it would be clear, even at law, if it came to the executor's hands, that trover would lie for it; and if it had been dis*posed of in the testator's lifetime, the executor, if assets are left, ought to answer for it. So if a man commits equitable waste, and dies, as where tenant for life without impeachment of waste, and as such having a right at law to cut timber on the estate, and a property in the trees, abuses that power, by cutting ornamental trees, or trees not ripe for cutting, a Court of Equity has jurisdiction to make the personal representatives of the party, who has committed such waste, accountable for the produce of it (*k*). But a Court of Equity will not direct an account, against the executor or administrator of tenant for life

for years is liable for permissive waste, and apparently therefore would have held that a tenant for life was in the same position. The liability of a tenant for life for permissive waste where there is an obligation to repair has never been doubted, and thus in Woodhouse *v.* Walker, 5 Q. B. D. 404, where a devise of premises for life provided that the tenant for life should keep the premises in repair, it was held that an action of tort for permissive waste by non-repair of the premises would have lain at common law against the tenant for life in her lifetime, and consequently lay under 3 & 4 Will. IV. c. 42, s. 2, if brought within the period of limitation, against her executor after her death. See also Batthyany *v.* Walford, 36 C. D. 269.

(*g*) Hambly *v.* Trott, 1 Cowp. 376, by Lord Mansfield.

(*h*) 7 A. & E. 426.

(*i*) 1 P. Wms. 406. See Powell *v.* Aiken, 4 K. & J. 352, *per* Wood, V.-C.

(*k*) Lansdowne *v.* Lansdowne, 1 Madd. 116.

[*1607]

without impeachment of waste, of dilapidations permitted by him in and about the mansion-house (*l*).

Again, an action would not lie against the executor of a parishioner, by whom tithes were subtracted, to recover the treble value under the statute of Edward the Sixth, even although the testator were a lessee for years so that his estate came to his executor; for, being founded on a personal tort, it died with the person (*m*). But the executor would have been liable in another form of proceeding; for the tithes, when severed, belonged to the tithe-owner; and the case, therefore, fell within the principle that where property is acquired which benefits the testator, an action for the value of the property shall survive against the executor (*n*).

It may here be mentioned that the personal representative of the mother of a bastard child is not liable for necessaries supplied to the child after her death (*o*).

And now by stat. 3 & 4 Wm. IV. c. 42, s. 2, after reciting that there is no remedy provided by law for certain wrongs done by a person deceased in his lifetime to another, in *respect of his property, real or personal; for remedy thereof it is enacted, "that an action of trespass, or trespass on the case, as the case may be, may be maintained against the executors or administrators of any person deceased for any wrong committed by him in his lifetime to another in respect of his property, real or personal, so as such injury shall have been committed within six calendar months before such person's death (*p*), and so as such action shall be brought within six

3 & 4 Will. 4, c. 42:

actions may be brought against executors for an injury to property real or personal, by the testator, committed six months before his death:

within what time to be brought.

(*l*) Lansdowne *v.* Lansdowne, 1 J. & W. 522.

(*m*) Wentw. Off. Ex. 254, 14th edit. Holl *v.* Bradford, 1 Sid. 88. Weekes *v.* Trussell, 1 Sid. 181. Moreton *v.* Hopkins, 2 Keb. 502. Com. Dig. Admon. (B. 15).

(*n*) By Lord Eldon, in Pulteney *v.* Warren, 6 Ves. 89, 90.

(*o*) Ruttinger *v.* Temple, 4 Best & Sm. 491.

(*p*) Where the plaintiff brought his action for damages and an injunction against the firm of T. & Co. for fouling a stream which caused no benefit to the defendants, and the firm consisted of T. alone who died more than six months after the commencement of action, and the action was continued against his executors, it was held that, T. having died more than six months after the commission of the acts complained of, no action either for damages or injunction could be maintained against his executors although the action had been commenced in the lifetime of the testator and although the executors continued the business in the name of the firm. Kirk *v.* Todd, 21 C. D. 484.

[*1608]

calendar months after such executors or administrators shall have taken upon themselves the administration of the estate and effects of such person; and the damages to be recovered in such action shall be payable in like order of administration as the simple contract debts of such person."

It was held in the case of Powell *v.* Rees (*q*), where coal had been tortiously taken from the plaintiff's land by an intestate, who had sold it and received the money, and part had been raised more than six months before his death, and part within six months, that the plaintiff might bring trespass, under this statute, against the administrator, for so much as was raised within the six months, and also money had and received for so much as was raised before (*r*); the acts being distinct, and therefore the two actions not incompatible.

In Richmond *v.* Nicholson (*s*), which was an action of trover for a watch against the defendant, as the executor of one Harriet Reeves, the declaration stated that Harriet *Reeves died on the 27th March, 1839, and alleged a conversion by her within six calendar months next before her decease: The defendant pleaded, that Harriet Reeves was not guilty within six calendar months before the time of her death: It appeared on the trial that the watch had been given by Harriet Reeves to one Spencer, in September, 1837; that Spencer redelivered it to her in March, 1838, for the purpose of its being pawned by her; that, on its being demanded by the plaintiff in December, 1838, Harriet Reeves said, "I shall not talk to you any more, but shall see my solicitor:" She died in March, 1839: And the Court of Common Pleas held, that this was sufficient evidence of a conversion within six months before her death.

Liability of executor of rector, &c., for dilapidations.

In conclusion of this branch of the subject, it may be mentioned, that an action on the case lies, by the custom of England, as it is sometimes expressed, but to speak more correctly, by the common law, against the executors of a parson, vicar, or other ecclesiastical person, at the suit of his successor, for dilapidations of the houses or buildings upon his spiritual benefice (*t*). So an action for dilapidations of a

(*q*) 7 A. & E. 426. *Ante*, p.*1606.

(*r*) *Ante*, p.*1606.

(*s*) 8 Scott, 134.

(*t*) Wentw. Off. Ex. 255, 14th edit. And by stat. 13 Eliz. c. 10, s. 2, if any spiritual person fraudulently grants away his goods, &c., so as nothing be left to his executors, such grantee shall be liable to the successor's suit in any Court Ecclesiastical, as he might have been, if the grantee was executor of the grantor.

[*1609]

prebendal house may be maintained by a succeeding prebendary against the executor of his predecessor (*u*). The law is the same as to a perpetual curate (*x*). And such an action is maintainable where the hedges and fences belonging to the glebe, are left in a state of decay, or where there has been a felling of timber growing thereon, otherwise than for repairs or fuel (*y*). But it will not lie in respect of pulling down a building on the rectory and substituting another in a different part, unless the value of the estate be impaired, the burthens on it increased, or the evidence of title impaired (*z*). *Moreover, neglect to cultivate the glebe land in a husbandlike manner is not a dilapidation for which the executors of an incumbent are liable (*a*). Nor will an action lie for digging gravel in the glebe (*b*). Formerly, indeed, it was doubted whether any action at law, or elsewhere than in the Spiritual Court, would lie for dilapidations, even by a succeeding rector, &c., against his predecessor who had vacated by cession or otherwise (*c*): but that point was determined in Jones *v.* Hill, 2 Wm. & M. (*d*): And the Temporal Courts having once taken cognizance of such matters, it should seem that the action was considered to lie against the executors of a deceased rector, &c., from the necessity of the thing; and it is at this day of common occurrence (*e*). If the successor dies, without having enforced the right of action, it survives to his executor, who being himself liable to the third incumbent for the whole of the dilapidations existing at the death of his own testator, may recover from the executor of the first incumbent for so much of them as occurred during the first incumbency (*f*).

The reason for the liability of the executor or administrator for such dilapidations was thus stated by Lord Chief Justice Willes, in Sollers *v.* Lawrence (*g*), "Because it is not considered as a tort in the testator, but as a duty which he ought to have performed; and therefore his representatives, so far as he left assets, shall be equally liable

(*u*) Radcliffe *v.* D'Oyly, 2 T. R. 630, 637.

(*x*) Mason *v.* Lambert, 12 Q. B. 795.

(*y*) 4 B. & Adol. 830.

(*z*) Huntley *v.* Russell, 13 Q. B. 572. See further S. C., as to what are acts of waste, for which this action lies.

(*a*) Bird *v.* Ralph, 4 B. & Adol. 826.

(*b*) Ross *v.* Adcock, L. R. 3 C. P. 655.

(*c*) See the observation of Buller, J., 2 T. R. 637. It is said in Went. Off. Ex. p. 255, 14th edit. that the executors are liable, *by the spiritual or ecclesiastical law.*

(*d*) 3 Lev. 268.

(*e*) See the judgment of Buller, J., in Radcliffe *v.* D'Oyly, 2 T. R. 637.

(*f*) Bunbury *v.* Hewson, 3 Exch. 558.

(*g*) Willes, 421.

[*1610]

as himself: And, for this reason, it is not contrary to the rule, that *actio personalis* (which is always understood of a *tort*) *moritur cum persona.*" It is observable, however, that this action is in form an action on the case in *tort;* and that it could not pos*sibly be framed in *assumpsit,* as on a contract; for the plaintiff must be the succeeding rector, &c., who cannot be known until after the death of the predecessor, and of course could not contract with him: It is clearly an exception to the general rule that no action will lie against an executor to which his testator was not liable, for the testator never can be liable, inasmuch as during his life there is no person who can sue. For the same reason this action, however anomalous in other respects, is not contrary to the rule, that *actio personalis moritur cum persona;* an action cannot be said to die, which never had nor could have had existence. It seems, therefore, not to be quite correctly stated, that "the executor shall be equally liable as the testator."

The liability of the representatives of a deceased incumbent to answer for dilapidations is now governed by stat. 34 & 35 Vict. c. 43 [Ecclesiastical Dilapidations Act, 1871]. By this act the bishop within three calendar months directs the diocesan surveyor to inspect the premises and report what sum, if any, is required to make good the dilapidations (*h*) (sect. 29). The surveyor sends a copy of his report to the bishop, new incumbent, and the representatives of the late incumbent (sect. 30), to which report opportunity to object is given (sects. 32–33). The bishop makes an order stating the repairs and their cost, for which such representatives are liable, and a copy of such order is delivered to them (sects. 34 and 35). The sum stated in the order as to the cost of repairs is a debt due from the representatives of the late incumbent and is recoverable in law or in equity (*h*) (sect. 36). No sum is recoverable for dilapidations in respect of any benefice unless the claim for such sum is founded on an order made under the provisions of the act (sect. 53).

34 & 35 Vict. c. 43 (Ecclesiastical Dilapidations Act, 1871).

An allotment made to a vicar in lieu of tithes, under an Inclosure Act, is subject to the law and custom of England, *as to dilapidations, equally with the ancient glebe; and if, when he comes into it, there are fences upon it which he ought to repair, but he dies leav-

(*h*) The sum stated in the bishop's order as the cost of repairs is under sect. 36, a debt payable to the new incumbent out of the assets of the late incumbent *pari passu* with the debts of his other creditors. Re Monk, 35 C. D. 583. See *ante*, pp. *876, *877.

ing them unrepaired, his executors are liable at the suit of his successor (*i*).

Extent to which executor of administrator of rector is liable for dilapidations.

It may be convenient to investigate, in this place, the *extent* to which the executor or administrator of a rector, &c., is liable for dilapidations. In Percival *v.* Cooke (*k*), Best, C. J., expressed an opinion at *nisi prius*, that the representatives of a prior incumbent are only liable for such repairs as an outgoing tenant would be bound to perform, and not for complete and finished repairs (*l*). In Wise *v.* Metcalfe (*m*), the subject was fully considered by the Court of King's Bench: and the judges of that court were of opinion that the incumbent is bound to maintain the parsonage (which must be assumed to be suitable in point of size, and other respects, to the benefice) and also the chancel, and to keep them in good and substantial repair, restoring and rebuilding, when necessary, according to the original form, without addition or modern improvement (*n*); and that he is not bound to supply or maintain anything in the nature of ornament, to which painting (unless necessary to preserve exposed timbers from decay) and whitewashing and papering belong: And that on this principle the damages must be calculated in an action for dilapidations against the executor or administrator of a deceased rector by the successor.

The successor may have separate actions against the execu*tor or administrator of the late rector, for dilapidations to different parts of the rectory (*o*).

Liability of executor for breaches of trust by testator.

It has been the constant habit of Courts of Equity to charge persons in the character of trustees with the consequence of a breach of trust, and to charge their representatives also; whether they derive benefit from the breach of trust or not (*p*).

(*i*) Bird *v.* Ralph, 2 Adol. & Ell. 773. 1 Nev. & M. 415.

(*k*) 2 Car. & P. 460.

(*l*) And his lordship in that case expressed his further opinion, that the executors were entitled to be allowed, in such estimate, for timber which the late incumbent might have cut and used in such repairs, and which his successor had used for that purpose. See also *Accord.*, as to stone and timber, which could be got from the glebe: Bunbury *v.* Hewson, 3 Exch. 558.

(*m*) 10 B. & C. 299.

(*n*) In North *v.* Baker, 3 Phillim. 309, Sir John Nicholl intimates that, in some cases, the thorough repair of old building is not all to fall on one incumbent. As to when the incumbent may remove hothouses, see Martin *v.* Roe, 7 E. & B. 237.

(*o*) Young *v.* Munby, 4 M. & S. 183.

(*p*) Adair *v.* Shaw, 1 Sch. & Lef. 272.

[*1613]

It may here be observed, that if an action is brought against an administrator for a breach of a covenant made by the deceased, it cannot be pleaded in bar that the defendant took out administration at the request of the plaintiff, and on his promise, *not under seal*, that he would not charge, or seek to charge, the defendant as administrator or otherwise with any breaches of the covenant in question (*q*).

It is no bar to an action against an administrator on a covenant made by the deceased that the defendant took out administration on a parol promise of the plaintiff that he would not sue.

*SECTION II.

Of particular instances where the Executor or Administrator is liable with respect to the Acts of the Deceased.†

In the preceding section, it has been attempted to collect the principal cases illustrative of the general principle as to the liability of executors and administrators with respect to claims which might be enforced against the deceased himself, if he were living: It remains

Montford *v.* Cadogan, 17 Ves. 489. Walsham *v.* Stainton, 1 De G. J. & S. 678. 1 H. & M. 322. If a trustee commit a breach of trust, and the consequences of it do not occur until after his death, his estate is liable, though if redress had been sought in respect of that breach of trust it was reparable in his lifetime. And this is true as well in the case of willful default as of an active breach of trust. Devaynes *v.* Robinson, 24 Beav. 86, 95. A testator entitled to shares in a company with unlimited liability, directed his executors to convert his estate with all convenient speed. P., one of these executors, died a year and five weeks after the testator. The shares were not converted, and about fifteen years afterward the company was wound up, and the surviving executors being placed on the list of contributories, paid a large sum out of the estate for calls. A bill was filed against the surviving executors and the executors of P. to make them liable for the loss. P.'s executors did not answer, nor did they in evidence give any reason why conversion had not taken place within a year from the testator's decease: and it was held (affirming Stuart, V.-C.), that P.'s estate was liable for all loss occasioned to the testator's estate by the omission to sell the shares within a year: and that as P.'s executors had not suggested by answer or evidence any reason for the delay, no inquiry could be directed on the subject. Grayburn *v.* Clarkson, L. R. 3 Ch. 605.

(*q*) Harris *v.* Goodwyn, 2 M. & Gr. 405. Perhaps the defendant might have been relieved by application to the court to restrain the action: *Per* Tindal, C. J., *ib.* 418: Since the Judicature Act, 1873 (s. 24 (5)), any such relief must be sought by raising any equity as a defense in the action.

† See American note at end of this section.

to advert to some particular instances in which such liability has been established.

Debts of record:

First, as to debts of record. The executor or administrator is bound, as far as he has assets, to satisfy all judgments recovered against the testator or intestate, without regard to the circumstance whether a judgment was founded on a cause of action which would not have survived his death: Thus, although the executor of a sheriff is not liable to be sued for an escape permitted by his testator (*r*), yet, if judgment was recovered for such escape against him in his lifetime, his executor is liable upon the judgment (*s*).

Statutes and recognizances:

An executor or administrator is also liable upon all statutes and recognizances entered into by the deceased (*t*); and upon all the inferior debts of record of the deceased, as fines imposed by the justices at Westminster, or at assizes, or quarter sessions, or by commissioners of sewers or of bankrupts, by stewards in leets, or the like (*u*).

Liability of executor on joint contracts of testator:

In the case of a joint contract,† where several contract on the same part, if one of the parties die, his executor or *administrator is at law discharged from all liability, and the survivor or survivors alone can be sued (*x*): And if all the parties are dead, the executor of the survivor is alone liable: Thus, if two retain an attorney, and both die, the executor or administrator of the survivor only shall be charged, and not the executors of both: for a personal contract survives of both parties; otherwise of real contracts, as warranty: and therefore, where, in an action against the executors of both, they pleaded jointly, and judgment

(*r*) See *ante*, p. *1601.

(*s*) Whitacres *v.* Onsley, Dyer, 322, a. b.

(*t*) It seems to have been once doubted whether the executor of the conusor of a statute merchant was liable: See Wentw. Off. Ex. c. 11, p. 243, 14th edit.

(*u*) Went. Off. Ex. c. 11, p. 240: but see Anon. Cro. Jac. 219.

† See American note at end of this section.

(*x*) Godson *v.* Good, 2 Marsh. 300, by Gibbs, Ch. J. S. C. 6 Taunt. 594. No particular words are necessary to constitute a covenant of either kind (that is to say, either joint or several). If two covenant generally for themselves without any words of severance, or that they *or* one of them shall do such a thing, a joint charge is created. White *v.* Tyndall, 13 A. C. 263, 269. Levy *v.* Sale, 37 L. T. 709. Clarke *v.* Bickers, 14 Sim. 639. And this is so even though the covenant be contained in a demise to two as tenants in common: White *v.* Tyndall, *ubi sup.*

was given for the attorney, it was stayed on motion, because the executor of the survivor only was chargeable, notwithstanding the pleading and admission of the parties (*y*).

So in debt upon bond, it appeared upon oyer that A., B., and C. were bound jointly, and that A. was dead; whereas the action was brought against his executor and the other two: Upon demurrer, the court were of opinion, that the action was not well brought: for by the death of one of the obligors, his executor is wholly discharged (*z*).

Where testator a sole defendant dies before judgment.

If a testator being a *sole* defendant dies *before* judgment by Order XVII., r. 1 (R. S. C., 1883), if the cause of action survive or continue, that is to say, if it does not fall within the rule *actio personalis moritur cum persona*, the action shall not abate, but the plaintiff may, under Rule 4 of the same order, obtain an order that the personal representative of the deceased be added as a party. This order, it seems, may be obtained *ex parte*.

Where testator a sole defendant dies after judgment.

*If a testator, *sole* defendant, die *after* judgment, then by the common law the plaintiff could issue execution against the goods of the testator without any order, if the judgment were recovered within a year before his death (*a*). But now, by Order XLII., r. 23, if any change has taken place by death in the parties liable to execution, leave must, it would seem, be obtained to issue execution (*b*) against the goods of the testator. This order must, it would seem, be obtained on notice to the executor (*c*).

(*y*) Hamond *v.* Jethro, 2 Brownl. 99. See also Calder *v.* Rutherford, 2 Brod. & Bing. 302. Slater *v.* Wheeler, 9 Sim. 156.

(*z*) Osborne *v.* Crosbern, 1 Sid. 238. See also Towers *v.* Moor, 2 Vern. 99. Richardson *v.* Horton, 6 Beav. 185.

(*a*) Wheatley *v.* Lane, 1 Saund. 285.

(*b*) Equitable execution is not "execution" within the meaning of this rule. What is commonly called equitable execution is not in fact execution, but equitable relief, which is granted because there is a hindrance in the way of execution at law, and it is subject to the ordinary rule that equitable relief can be granted only when proper parties are before the court. Assuming, therefore, that execution at law can be issued against the estate of a deceased person without any leave of the court (as to which *quære*) a receiver by way of equitable execution cannot be appointed of the estate in the absence of the persons on whom the estate has devolved. Order XVII. r. 1, does not keep an action alive as against the estate of a deceased party unless the estate has devolved on some one who is a party to the action. Re Shephard, 43 C. D. 131.

(*c*) Re Shephard, *ubi sup.*

If one of *several* defendants on a joint cause of action die *before* judgment, then it would seem that in a personal action the estate of the dead man is discharged from liability (*d*), for if two enter into a joint bond, and one die at any time before judgment, the survivor shall be charged alone (*e*). And if one of two defendants dies after judgment, and the plaintiff *elects to take execution against the personalty, the execution must be against the survivor alone (*f*): So a release given by the obligee to the representatives of the deceased obligor is no answer to an action against the survivor (*g*).

Where one of several defendants dies before judgment.

And if one of *several* defendants on a joint cause of action die *after* judgment, it would seem that Order XLII. r. 23 (R. S. C., 1883), will not, except as against the land of the deceased (*h*), apply, because, as we have seen, if one of two defendants die after judgment and the plaintiff elects to take execution against the personalty, the execution must be against the survivor alone.

When one of several defendants dies after judgment.

And in the same way, although it is provided by Order XVII. r. 1 (R. S. C., 1883), that whether the cause of action survive or not, there shall be no abatement by reason of the death of either party between the verdict or finding of the issues of fact and the judgment, but that the judgment may in such a case be entered notwithstanding the death, so that if one of two or more defendants dies between

(*d*) By sect. 136 of the Common Law Procedure Act, 1852, it was enacted that: "If there be two or more plaintiffs or defendants, and one or more of them should die, if the cause of such action shall survive to the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants, the writ or action shall not be thereby abated, but such death being suggested upon the record, the action shall proceed at the suit of the surviving plaintiff or plaintiffs against the surviving defendant or defendants." And now it would seem that in such a case the action would by virtue of Order XVII. r. 1, proceed as against the defendant on whom the whole liability had devolved by survivorship without the necessity of obtaining any order.

(*e*) Lampton *v.* Collingwood, 4 Mod. 315.

(*f*) If he takes out execution upon the real lien, the charge must be equally against the survivor and the real representative of the deceased; for though a personal execution survives, a real does not: Sir W. Harbert's case, 3 Co. 14, *a.* 2 Saund. 51, note (4) to Trethewy *v.* Ackland.

(*g*) Ashbee *v.* Pidduck, 1 M. & W. 564.

(*h*) If it is sought to have execution against the land of a deceased judgment debtor on a joint cause of action, leave to issue an *elegit* must be obtained, it would seem, on notice to the heir. See Ord. XLII. r. 23.

[*1617]

verdict and judgment, judgment may be entered on taking the proper steps under Order XVII. r. 2 and r. 4, against the deceased defendant, even though the cause of action fall within the rule *actio personalis moritur cum persona*, yet it would seem that, if the cause of action be joint, there is nothing in this order to enable the action to continue against any other than the surviving defendant.

But if the contract be several, or joint and several, the executor of the deceased contractor may be sued at law in a separate action (*i*): but he cannot be sued jointly with the *survivor; because one is to be charged *de bonis testatoris*, the other *de bonis propriis* (*k*).

Liability in equity of executor of deceased joint contractor.

With regard to the liability in equity of the executor of the deceased joint contractor, it is completely settled that in the case of a partnership debt, although at law, upon the death of a partner, the remedy against his executors is extinguished (inasmuch as a partnership contract is joint), yet they may be sued in equity (*l*). And after much contention it is now settled that the joint creditor may, in the first instance, resort to the assets of the deceased partner, leaving it to the personal representatives of the deceased partner to take proper measures for recovering what, if anything, shall appear upon the partnership accounts to be due from the surviving partner to the estate of the deceased partner (*m*). *Thus, in Kendall *v.* Hamil-

(*i*) May *v.* Woodward, 1 Freem. 248. As to what words will constitute a joint and several bond, see Tipping *v.* Coates, 18 Beav. 401. White *v.* Tyndall, 13 A. C. 263.

(*k*) Hall *v.* Huffam, 2 Lev. 228.

(*l*) Vulliamy *v.* Noble, 3 Meriv. 619. Winter *v.* Innes, 4 My. & Cr. 109. See Holme *v.* Hammond, L. R. 7 Ex. 218. This rule is applicable to the case of the death of one of two executors carrying on their testator's trade, in that character, and in the ordinary course of the business accepting a bill of exchange describing themselves simply as executors of their testator: Liverpool Borough Bank *v.* Walker, 4 De G. & J. 24, in which case the estate of the deceased executor was held liable. It is to be observed that in cases of joint contracts there is no difference between law and equity, except in the single case of the death of one of the parties to a joint contract, where the contract was such that the maxim *inter mercatores jus accrescendi locum non habet* applied: *per* Lord Blackburn, Kendall *v.* Hamilton, 4 A. C. 504, 545.

(*m*) Devaynes *v.* Noble, 1 Meriv. 530. Wilkinson *v.* Henderson, 1 M. & K. 582. The surviving partners are necessary parties to a creditor's suit against the assets of the deceased: Hills *v.* McRae, 9 Hare, 297. In Brown *v.* Gordon, 16 Beav. 310, Romilly, M.R., said, that the debt though gone at law, remains due in equity, because equity considers it to be unjust that where two or more persons are jointly liable, the death of one should throw the whole debt on the others, and exonerate his estate. In Ridgway *v.* Clare, 19 Beav. 111, the

[*1618] [*1619]

ton (*o*), Cotton, L.J., in pronouncing the judgment of the court, says: "It is now well established that a Court of Equity does treat the estate of a deceased partner as still liable to the partnership creditors, though at law the survivor has become solely liable. And it must now be considered as established that the partnership creditor may obtain relief against the estate of the deceased partner without having exhausted his remedy against the survivor."

Again, in the late case of Re Hodgson (*p*), it was held that a creditor of a partnership firm, although not strictly a joint and several creditor, has concurrent remedies against the estate of a deceased partner and the surviving partner, and that it makes no difference which remedy he pursues first.

Nor will the first creditor be precluded from resorting to the assets of the deceased partner by having in the first instance obtained judgment against the surviving partners (*q*).

Now by section 9 of the Partnership Act, 1890 (53 & 54 *Vict. c. 39), it is provided that:—"Every partner in a firm is liable jointly

same learned judge took occasion to express his opinion as to the mode in which the court administers assets in cases of this description as follows, *viz.*: Where both partners are solvent, there is no distinction made between joint and several creditors; they are all paid, and in taking the partnership accounts, the joint debts thus paid will be allowed in account by the surviving partner:——If the estate of the deceased partner be insolvent, and that of the surviving partner solvent, the joint creditors will naturally go against the surviving partner, who will then be a creditor against the separate estate of the insolvent partner for the amount paid by him to the joint creditors beyond his share:——If both the deceased and surviving partner are insolvent, then the joint creditors must resort, in the first instance, to the joint estate, and can only go against the separate estate of each partner after the claims of his separate creditors have been satisfied:——If both parties die before administration takes place, the rule is the same. See also Lodge *v.* Pritchard, 4 Giff. 294. 1 De G. J. & S. 610. The Court of Chancery enforces the remedies against the estate of a deceased partner subject to two conditions. In the first place it requires that partnership debts shall be postponed to the separate debts, and that upon a very apparent ground; for it is obvious that inasmuch as the partnership debts are paid first from the partnership estate before anything can flow from the partnership estate to the separate estate of the deceased partner, it is not unreasonable by contrast that the partnership debts should be postponed to the separate debts. The second condition is that the court requires the presence of the surviving partner in some method, shape, or manner at the taking of the accounts of the partnership: *per* Fry, L.J., Re Hodgson, 31 C. D. 177, 192.

[*1620]

(*o*) 3 C. P. D. 403, 407.

(*p*) 31 C. D. 177.

(*q*) Liverpool Borough Bank *v.* Walker, 4 De G. & J. 24. Jacomb *v.* Harwood, 2 Ves. Sen. 265.

with the other partners, and in Scotland severally also, for all debts and obligations of the firm incurred while he is a partner; and after his death his estate is also severally liable in a due course of administration for such debts and obligations so far as they remain unsatisfied, but subject in England or Ireland to the prior payment of his separate debts."

Liability of partners.

The equitable remedy extends to every joint contract for a loan of money giving to the creditor the benefit of the security of several persons, without any distinction that the debt must be a mercantile debt incurred by joint traders: Thus, in Thorpe *v.* Jackson (*r*), where four persons had opened a joint account with certain bankers, who advanced them money on such joint account, Alderson, B., held, that upon the decease of one of the joint contractors, the bankers had a right in equity to immediate relief out of his assets, without claiming any relief against the surviving joint contractors, or showing that the latter were unable to pay by reason of their insolvency (*s*).

Although this interposition of Courts of Equity with regard to partnership debts on the death of a member of a partnership has led to the expression that partnership debts in the eye of a Court of Equity are joint and several, this does not mean that a Court of Equity altered or changed a legal contract, but merely that the court, in order, before distributing assets, to administer all the equities existing with regard to them, would go behind the legal doctrine that a partnership debt survived as a claim against the surviving partners only, and would give the creditor the benefit of the equity which the surviving partners might have insisted on (*t*).

At one time there seems to have been a tendency in Courts of Equity to treat partnership debts as being joint and several irrespective of death and the necessity for the purpose of *administration of excluding the doctrine of survivorship. Thus, Sir William Grant, after stating that it has never been determined that every joint covenant is in equity to be considered as the several covenant of each of the covenantors, and that when the obligation exists only by virtue of the covenant the extent of the obligation can be measured only by the words in which it is conceived, goes on to say that in the case of a partnership debt all the partners have had a benefit from

(*r*) 2 Younge & Coll. 553.

(*s*) But see Slater *v.* Wheeler, 9 Sim. 157. Other *v.* Ivison, 3 Drew. 177, 181, 182.

(*t*) Kendall *v.* Hamilton, 4 A. C. 504, 517, *per* Lord Cairns, L. C.

[*1621]

the money advanced or the credit given, and the obligation to pay exists independently of any instrument by which the debt may have been secured (*u*).

But although a partnership liability will not generally be treated as joint and several in equity, apart from administration, yet there are cases in which a Court of Equity will treat a joint obligation as several, and the true doctrine on the subject of obtaining relief in equity by considering joint contracts as several, appears to be, that wherever a Court of Equity sees that in a contract joint in form, the real intention of the parties was, that it should be joint and several, it will give effect to such intention. Accordingly, in certain cases, a joint bond has, in equity, been considered as several (*x*). Thus a joint bond has, in equity, been considered as several, where there has been a credit previously given to the different persons who have entered into the obligation, and it was not the bond which first created the liability to pay. But where the obligation exists only by virtue of a joint covenant or bond, the extent of its operation can be measured only by the words in which it is conceived; and a Court of Equity cannot give the instrument any other than its legal effect (*y*). Accordingly, where a joint promissory *note, signed "J. and J. Ewing—James Parr, *surety*," was given to a creditor of the firm of John and James Ewing, and James Parr died, John and James Ewing being both alive, one of whom afterward became bankrupt, and the other insolvent; it was held that the promissory note could not be considered as several, against James Parr the surety (*z*). So where A. and B. were obligors in a joint bond, and A., who was alleged to be the principal debtor, died; it was held that his assets were not, in equity, liable upon the bond, but that the liability survived to B. (*a*). Again, where premises had been demised to A. and B., who were copartners, upon which they carried on their partnership business, and A. died during the lease, and, after his death, his executors carried on the business in copartnership with B. on the premises:

(*u*) Sumner *v.* Powell, 2 Meriv. 37; 1 Turn. & R. 423.

(*x*) Primrose *v.* Bromley, 1 Atk. 90. Bishop *v.* Church, 2 Ves. Sen. 100, 371. Hoare *v.* Contencin, 1 Bro. Ch. C. 27. Thomas *v.* Frazer, 3 Ves. 399. Burn *v.* Burn, 3 Ves. 573. *Ex parte* Kendall, 17 Ves. 525. Liverpool Borough Bank *v.* Walker, 4 De G. & J. 24. *Ante*, p. *1618, note (*l*).

(*y*) Sumner *v.* Powell, 2 Meriv. 30. S. C. affirmed, 1 Turn. & R. 423. Richardson *v.* Horton, 6 Beav. 185. Wilmer *v.* Currey, 2 De G. & Sm. 347.

(*z*) Rawstone *v.* Parr, 3 Russ. 424, 539. Other *v.* Iveson, 3 Drewr. 177.

(*a*) Richardson *v.* Horton, 6 Beav. 185.

[*1622]

it was held, nevertheless, that the covenants in the lease, which were joint only, were not to be considered in equity as several as well as joint, so as to make A.'s estate liable for breaches of the covenant which occurred after his death (*b*). On the other hand, the Court of Appeal, in the case of Beresford *v.* Browning (*c*), construed a contract, relating to payment and indemnity to a retiring partner, which was joint in form, as several, on the ground that the circumstances under which the contract was entered into, showed that there was a joint and several liability independently of the contract, and, therefore, an intention that the continuing partners should be severally liable.

It being now settled, beyond dispute, that the estate of a deceased partner is liable in equity to the creditors of the firm, although the legal remedy exists only against the survivors, a further question remains to be considered, *viz.*, *when and by what means that liability is to terminate. It seems clear that the deceased partner's estate must continue liable until the debts, which affected him at the time of his death, are, in some way, fully discharged (*d*). The discharge, however, may take place in various ways; not only by direct payment, but also by dealings with the continuing partners operating as a payment of the joint debt, or from the creditors having agreed to take and taking the security of the surviving partners in discharge of the joint debt (*e*): Or there may be an equitable bar to the remedy; for as the right stands only upon equitable grounds, if the dealing of the creditor with the surviving partners has been such as to make it inequitable that he should go against the assets of the deceased partner, he will not, upon general rules and principles, be entitled to the benefit of the demand (*f*). But the estate of the deceased partner is not discharged by the mere circumstance that the creditor, knowing

(*b*) Clarke *v.* Bickers, 14 Sim. 639. As to the nature of the liability of partners see Lindley on Partnership, 5th edit. p. 192 *et seq.*

(*c*) 1 C. D. 30. Cf. Wilmer *v.* Currey, 2 De G. & Sm. 347, where it was held on the facts that the deed imported a new liability.

(*d*) Vulliamy *v.* Noble, 3 Meriv. 619.

(*e*) Thompson *v.* Percival, 5 B. & Ad., 925. Winter *v.* Innes, 4 My. & Cr. 110.. Brown *v.* Gordon, 16 Beav. 302. (See also Lee *v.* Flood, 2 Sm. & G. 250.) Blair *v.* Bromley, 5 Hare, 555, *per* Wigram, V.-C., Lyth *v.* Ault, 7 Exch. 669. Bilborough *v.* Holmes, 5 C. D. 255. As to discharge by proof, where there is no *locus pœnitentiæ*, against the estate of the continuing parties in bankruptcy, see Scarf *v.* Jardine, 7 A. C. 345. See also Simpson *v.* Henning, L. R. 10 Q. B. 406 as to the effect of the receipt of a composition on the joint debt.

(*f*) *Ex parte* Kendall, 17 Ves. 526, by Lord Eldon.

[*1623]

of the death, continues his transactions with the surviving partners, and forbears for several years, at their request, to take any steps to enforce payment of his debt (*g*): nor by his receipt of interest from them and a new partner (*h*).

Right to enforce contribution.

*With respect to the right of a surviving co-contractor to enforce contribution from the personal representatives of his deceased companion; although it cannot be stated as a universal proposition that in all cases where two or more jointly employ a third person, there is an implied undertaking in all to contribute rateably *inter se*, so as to bind the executors of a deceased co-contractor; yet if several persons jointly contract for a chattel, to be made or procured for the common benefit of all (for instance the building of a ship or the furnishing of a house), *and as to which the executors of any party, dying before the work is completed, are by agreement to stand in the place of the party dying;* in such a case, though the legal remedy of the party employed would be solely against the survivors, yet the law would certainly imply a contract on the part of the deceased co-contractor, that his executors should contribute his proportion of the price of the article to be furnished (*i*).

Provisions of the Partnership Act, 1890 (53 & 54 Vict. c. 39).

Besides the sections already cited the following sections of the Partnership Act, 1890 (53 & 54 Vict. c. 39), seem to be those which affect the duties and liabilities of executors:

Dissolution by death or bankruptcy.

Sect. 33 (1). "Subject to any agreement between the partners, every partnership is dissolved as regards all the partners by the death or bankruptcy of any partner."

Sect. 36 (3). "The estate of a partner who dies, or who becomes

(*g*) Winter *v.* Innes, 4 My. & Cr. 101.

(*h*) Harris *v.* Farwell, 13 Beav. 403. By sect. 14 (2) of the Partnership Act, 1890 (53 & 54 Vict. c. 39), it is provided that "Where after a partner's death the partnership business is continued in the old firm-name, the continued use of that name or of the deceased partner's name as part thereof shall not of itself make his executor's or administrator's estate or effects liable for any partnership debts contracted after his death." And see Webster *v.* Webster, 3 Swanst. 490. For other cases relating to these doctrines, see Lindley on Partnership, 5th edit. 249 *et seq.*

(*i*) Prior *v.* Henbrow, 8 M. & W. 873. See also Batard *v.* Hawes, 2 E. & B. 287, 298, *post*, *1663, note (*i*), where the court seemed to think the executors liable without any special agreement.

[*1624]

bankrupt, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable for partnership debts contracted after the date of the death, bankruptcy, or retirement respectively."

Liability of estate of partner for partnership debts contracted after death of partner.

Sect. 39. "On the dissolution of a partnership every partner is entitled, as against the other partners in the firm, and all persons claiming through them in respect of their interests as partners, to have the property of the partnership *applied in payment of the debts and liabilities of the firm, and to have the surplus assets after such payment applied in payment of what may be due to the partners respectively after deducting what may be due from them as partners to the firm; and for that purpose any partner or his representatives may on the termination of the partnership apply to the Court to wind up the business and affairs of the firm."

Rights of partners as to application of partnership property.

Sect. 42 (1). "Where any member of the firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with its capital or assets without any final settlement of accounts as between the firm and the outgoing partner or his estate, then, in the absence of any agreement to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since the dissolution as the Court may find to be attributable to the use of his share of the partnership assets, or to interest at the rate of five per cent. per annum on the amount of his share of the partnership assets."

Right of outgoing partner in certain cases to share profits made after dissolution.

(2) "Provided that where by the partnership contract an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits; but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section."

Sect. 43. "Subject to any agreement between the partners, the amount due from surviving or continuing partners to an outgoing partner or the representatives of a deceased partner in respect of

[*1625]

the outgoing or deceased partner's share is a debt accruing at the date of the dissolution or death."

Retiring or deceased partner's share to be a debt.

Liabilities of executors as such of deceased shareholders in public companies.

25 & 26 Vict. c. 89.

With respect to the liabilities of the executors of shareholders in public companies it is important to notice the pro*visions of the Companies Act, 1862. The following are the chief sections of that act which are material in this connection:

Sect. 16. ". . . . All moneys payable by any member to the company, in pursuance of the conditions and regulations of the company, or any of such conditions and regulations, shall be deemed to be a debt due from such member to the company, and in England and Ireland to be in the nature of a specialty debt" (*k*).

Nature of liability of contributory.

Sect. 75. "The liability of any person to contribute to the assets of a company under this Act, in the event of the same being wound up, shall be deemed to create a debt (in England and Ireland) of the nature of a specialty, accruing due from such person at the time when his liability commenced (*l*), but payable at the time or respective times when calls are made as hereinafter mentioned for enforcing such liability; and it shall be lawful in the case of the bankruptcy of any contributory to prove against his estate the estimated value of his liability to future calls as well as calls already made."

Contributories in case of death.

Sect. 76. "If any contributory dies, either before or after he has been placed on the list of contributories hereinafter mentioned (see sect. 98), his personal representatives, heirs, and devisees (*m*) shall be liable in a due course of administration to contribute to the assets of the company in discharge of the liability of such deceased contributory, and such personal representatives, heirs, and devisees shall be deemed to be contributories accordingly" (*n*).

(*k*) See Buck *v.* Robson, L. R. 10 Eq. 629. Re Muggeridge, *ibid.* 443.

(*l*) See Re Muggeridge, L. R. 10 Eq. 443.

(*m*) It follows that under 3 & 4 Will. IV. c. 104, the real estate of the deceased is chargeable with calls made as well after as before the deceased's death: Turquand *v.* Kirby, L. R. 4 Eq. 123. Hamer's Devisees' case, 2 De G. M. & G. 366. There is no distinction between the dead shareholder's estate and the living shareholders' as to the extent and measure of liability: Baird's case, L. R. 5 Ch. 725.

(*n*) Although the liability is *prima facie* a liability of the deceased's estate and not of his personal representatives personally, unless they have by their acts made themselves liable as share-

[*1626]

*Sect. 99. "In settling the list of contributories the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or being liable to the debts of others; it shall not be necessary, where the personal representative of any deceased contributory is placed on the list, to add the heirs or devisees of such contributory, nevertheless such heirs or devisees may be added as and when the Court thinks fit."

Provision as to representative contributories.

Sect. 105. "If any person made a contributory as personal representative of a deceased contributory makes default in paying any sum ordered to be paid by him, proceedings may be taken for administering the personal and real estates of such deceased contributory or either of such estates, and of compelling payment thereout of the moneys due."

Provision in case of representative contributory not paying moneys ordered.

Unless by the Articles of Association the regulations of Table A. are excluded the following articles relating to the transmission of shares and the liabilities thereon will apply:

Art. 12. "The executors or administrators of a deceased member shall be the only persons recognized by the company as having any title to his share" (*o*).

Shares devolving by death.

*Art. 13. "Any person becoming entitled to a share in consequence of the death, bankruptcy, or insolvency of any member, or in consequence of the marriage of any female mem-

Persons entitled by death, bankruptcy or marriage.

holders; yet where executors paid a legacy without providing for any contingent liability in respect of shares which they retained unsold, and the company was subsequently wound up and the executors placed on the list of contributories, it was held that they were liable to pay the amount of the legacy in satisfaction of calls: Taylor *v.* Taylor, L. R. 10 Eq. 477. As to the right of the executors to be indemnified by the legatees, see Jervis *v.* Wolferstan, L. R. 18 Eq. 18. Where shares are registered in the joint names of two or more persons a joint liability only is created, which will survive on the death of one to the others: Hill's case, L. R. 20 Eq. 585, 595.

(*o*) The death of a shareholder makes not the slightest difference either in right or liability; the executor of a deceased shareholder who succeeds in point of property takes it (of course in his character as executor) on exactly the same terms and conditions as every other owner of the share, with equal benefits and equal liability. The dead shareholder remains, that is, his estate remains, a member of the association: Baird's case, L. R. 5 Ch. 725. Blakeley's case, 3 Mac. & G. 726; 13 Beav. 133. Gouthwaite's case, 3 Mac. & G. 187. Keen's Executor's case, 3 De G. M. & G. 272. Heward *v.* Wheatley, *ibid.* 628. See also Re Herefordshire Bank, 33 Beav. 435. Re Leeds Banking Company, L. R. 1 Ch. 231.

ber, may be registered as a member upon such evidence being produced as may from time to time be required by the company."

Personal liability of executor besides liability of the estate.

Besides the liability of the estate of a deceased shareholder in respect of shares, the executor or administrator may make himself personally liable in respect of the same. An executor whose testator has held shares in a joint-stock company has generally one of two courses open to him. He may have the shares transferred into his own name and become to all intents and purposes a partner in the company (*p*). He may on the other hand, not wish to have the shares transferred into his own name, and he ought in that case to have a reasonable time allowed him to sell the shares and to produce a purchaser who will take a transfer of them (*q*).

It is quite open to an executor, as appears from Lord Selborne's language in Buchan's case (*r*), to notify simply to the company, in which the testator was a shareholder, that he is the executor, and that alone would not authorize the company to put the name of the executor upon the register of shareholders in such a way as to make him personally liable: But where, upon the amalgamation of two banking companies, a shareholder had the option of exchanging his shares in the one bank for shares in the other, which was taking over the business of the former, and did not exercise the option but his executors did, and a certificate was made out to them individually but describing them as executors, they were held *liable, although the bank subsequently at their request canceled the certificate in their names and made one out in the name of the testator (*s*). For if shares are once put into the names of executors individually, although offered to and accepted by them in a representative capacity, they cannot say that their liability is to be only a liability to the extent of the assets of the testator (*t*).

The case of trustees who take a transfer of shares in their names differs, in principle, from that of executors, who merely intimate

(*p*) In Spence's case, 17 Beav. 203, it was held that executors, who after the death of their testator had purchased further shares, were contributories without qualification in respect of them, though they had been treated as executors in regard to such further shares. See also Re Leeds Banking Company, L. R. 1 Ch. 231. Jackson *v.* Turquand, L. R. 4 H. L. 305.

(*q*) Buchan's case, 4 A. C. 549, 588, *per* Lord Cairns, L. C.

(*r*) 4 A. C. 549.

(*s*) Re Cheshire Banking Co., Duff's Executors' case, 32 C. D. 301.

(*t*) *Ibid.* 309.

their title as executors to a company, in order to claim and exercise the rights which belong to them as the legal representatives of their testator. Trustees have not, in any proper sense of the word, a representative character, but executors have. Having representative rights, it is impossible that they should not be entitled to produce the legal evidence of them to the company, for the purpose of having their title in some way recorded and recognized, without making themselves personally liable (*u*).

The liability of an executor, so long as he has not himself become a shareholder, is limited to the extent of the assets in his hands properly administered. If he is guilty of a *devastavit* he will, however, be held liable to the extent of the *devastavit* to pay moneys due either before or after the death of the testator on the shares of the testator still standing in the testator's name (*x*).

Covenants concerning the realty:

In every case, where the testator is bound by a covenant, the executor shall be bound by it, if it be not determined by the death of the testator (*y*); † that is, unless it is such a covenant as was to be performed by the person of the *testator (*z*). Thus, in Thursden *v.* Warthen (*a*), a lord of a manor covenanted for himself, his heirs, and executors, within seven years to convey, upon request, a copyhold to the plaintiff for life, *secundum consuetudinem manerii:* The covenantor died, and the plaintiff requested his executor to convey the copyhold, which he refused; and thereupon, the plaintiff brought an action of covenant against the executor: It was objected, that the declaration did not show what estate the covenantor had in the manor, and therefore it should be intended to be a fee-simple, and if so, then the request ought to have been made to him who was to make the estate, and this was the heir; for the executor could not possibly perform the covenant, and so no breach by him: But Coke, Chief Justice, said, that the request made to the executor was good; because executors represent the person of the testator as to the performance of covenants to be in cov-

(*u*) Buchan's case, 4 A. C. 549, 595, *per* Lord Selborne.

(*x*) Taylor *v.* Taylor, L. R. 10 Eq. 477. As to the liability of an executor where a release given to a testator by a company had been set aside, see Re Bewley, 24 L. T. N. S. 177; 19 W. R. 464.

(*y*) Bro. Covenant, pl. 12. Com. Dig. Covenant (C. 1).

† See American note at end of this section.

(*z*) Hyde *v.* Dean of Windsor, Cro. Eliz. 553. Bally *v.* Wells, 3 Wils. 29.

(*a*) 2 Bulstr. 158.

[*1630]

enant performed: And to this the whole court (except Houghton, Justice) agreed; and judgment was given for the plaintiff.

So in the case of Macartney *v.* Blundell (*b*), in Dom. Proc., the appellant claimed the renewal of a lease, pursuant to a covenant, against the heirs of the covenantor: They refused, alleging that the covenantor was bare tenant for life: And it was holden, that this refusal was a breach of the covenant, for which an action could be maintained at law against his representatives.

The executor is not only liable upon all covenants by the testator which have been broken in his lifetime (*c*), but, moreover, he is answerable for all breaches in his own time, as far as he has assets: For the privity of contract of the testator is not determined by his death (*d*). Thus, if a tenant in tail leases for years, and dies, and the issue in *tail ousts the termor, he shall have covenanted against the executors, upon an express covenant for quiet enjoyment (*e*).

Again, although a covenant in a lease should be of a nature such as to run with the land, so as to make the assignee of the term liable for a breach of it after the assignment, yet this shall not discharge the executor of the original lessee from a concurrent liability on the covenant, as far as he has assets, even although the lessor shall have accepted the assignee as his tenant.

Liability of executor of landlord and tenant:

Therefore, where the lessee has assigned the term in his lifetime, the lessor may still maintain an action of covenant against the executor of the lessee, upon an express covenant for payment of rent, even although the lessor has accepted the assignee for his tenant: And so may the assignee of the reversion, by virtue of the stat. 32 Henry VIII. c. 34 (*f*).

(*b*) 2 Ridgw. P. C. 113.

(*c*) Wentw. Off. Ex. 251, 14th edit.

(*d*) Coghill *v.* Freelove, 3 Mod. 326.

(*e*) F. N. B. 145 (E), note (*a*). As to powers now of tenant in tail to lease, see Settled Land Act, 1882, 45 & 46 Vict. c. 38, s. 58.

(*f*) Brett *v.* Cumberland, Cro. Jac. 521, 522. 1 Saund. 241, *a.* note (5) to Thursby *v.* Plant. But although the executor of the *original lessee* will be liable for breaches of covenant, incurred after an assignment by the testator or by himself, it is otherwise where the testator was the *assignee of the lessee;* for no action will lie against him except in respect of breaches in his own time: and therefore, all future liability may be discharged by assignment over, even to a pauper: Taylor *v.* Shum, 1 B. & P. 21. And since such a course is quite justifiable, morally as well as legally, after an offer to surrender the lease to the landlord, the executor may be guilty of a *devastavit* in neglecting to adopt it: Rowley *v.* Adams, 4 My. & Cr. 534.

[*1631]

So if the executor himself assigns the term, the lessor may afterward bring covenant against the executor, notwithstanding any acceptance of the assignee as tenant: And so also may the assignee of the reversion (*g*).

in covenant:

*Hence an executor, when he carries a lease to market, has a right to require that the purchaser shall covenant for indemnity against the payment of rent and performance of covenants, notwithstanding the executor himself is not bound to enter into a covenant for the title, but only that he has done no act to encumber (*h*).

It must be observed, however, that there is a distinction, with respect to this liability, between an express covenant and a mere covenant *in law*: For no action lies against an executor or administrator upon a covenant in law, which is not broken till after the death of the testator. Accordingly, in the case of Adams *v.* Gibney (*i*), a tenant for life, remainder over, demised to the lessee, his executors, &c., for the term of fifteen years, *without any express covenant for quiet*

(*g*) Hellier *v.* Casbard, 1 Sid. 266. Coghill *v.* Freelove, 3 Mod. 325. But see stat. 22 & 23 Vict. c. 35, s. 27, *ante*, p. *1204, note (*l*), by which an executor or administrator liable to a covenant in a lease or agreement for a lease granted or assigned to the testator or intestate, after satisfying all liabilities already accrued due, and setting apart a sufficient fund to answer any future claims that may be made in respect of any fixed or ascertained sum covenanted by the lessee to be laid out on the property, may assign the lease to a purchaser and distribute the residuary personal estate of the deceased without appropriating any part to meet any future liability under the lease. When the executor has done this he has freed himself from all personal liability in respect of any subsequent claim. This is, however, without prejudice to the lessor's right to follow the assets of the deceased.

(*h*) Staines *v.* Morris, 1 Ves. & B. 8. Wilkins *v.* Fry, 1 Meriv. 265, 266. Even if there be no such covenant, yet if the lessor proceeds against the executor, and recovers damages for a breach of the covenant after the assignment, the executor may have an action on the case, or *assumpsit*, against the assignee, for having neglected to perform the covenant, whereby the executor sustained damage: Burnett *v.* Lynch, 5 B. & C. 589. Marzetti *v.* Williams, 1 B. & Ad. 424, by Lord Tenterden. Moule *v.* Garrett, L. R. 5 Exch. 132. Affirmed in Exch. Ch., L. R. 7 Exch. 101. But this liability in the assignee continues no longer than his interest as such: Wolveridge *v.* Steward, 1 Cr. & M. 644. Humble *v.* Langston, 7 M. & W. 530. Rowley *v.* Adams, 4 My. & Cr. 540: though, perhaps, the executor has the same remedy against each subsequent assignee in respect of the breaches committed during the continuance of the interest of each; Wolveridge *v.* Steward, 1 Cr. & M. 660.

(*i*) 6 Bing. 656. See also Williams *v.* Burrell, 1 C. B. 402, as to what shall constitute an implied or an express covenant within the meaning of this rule.

enjoyment: The lessee was evicted by the remainder-man, after *the death of the tenant for life, but before the expiration of the fifteen years: And the Court of Common Pleas held, that the lessee could not maintain an action of covenant against the executor of the tenant for life, in respect of such eviction, although it was admitted that the word "demise" in the lease imported and made a covenant *in law* for quiet enjoyment by the lessee during the continuance of the estate out of which the lease was granted.

in debt:

With respect to the liability of the executor of the lessee to an action of *debt* for rent accrued after the death of the testator, it is fully established, that the executor will be liable as long as the lease continues, and as far as he has assets, as well in that form of action as in covenant, notwithstanding the lessor assigned the term before his death, or the executor has done so since (*k*). But if the lessor has *accepted the assignee as his tenant,* then no action of debt will lie against the executor for rent accrued since the assignment, although, as it just appeared, an action of covenant may be maintained on an express covenant for its payment during the continuance of the lease.

personal liability of executor for rent accrued after testator's death:

This may be the proper place to consider more fully a subject, which has been already partially discussed (*l*), *viz.*, *the personal responsibility of the executor for the rent incurred under a demise to his testator.†

(*k*) It is true that Lord Coke, in Walker's case, 3 Co. 24, *a.*, says, that "it was adjudged in Overton *v.* Sydhall, that if the executor of a lessee for years assigns over his interest, an action of debt does not lie against him for rent due after the assignment; and that if lessee for years assigns over his interest, an action of debt does not lie against him for rent due after the assignment; and that if lessee for years assigns over his interest and dies, the executor shall not be charged for rent due after his death; for by the death of the lessee the personal privity of contract as to the action of debt in both cases was determined:" But this is contrary to all the subsequent authorities; See Coghill *v.* Freelove, 3 Mod. 325. Pitcher *v.* Tovey, 4 Mod. 76. 1 Saund. 241, *b.* note (5).

(*l*) *Ante*, p.*600. It has been thought better to leave the discussion in the following pages as it appeared in the earlier editions unaltered except by the addition of new cases, notwithstanding the constant reference to ancient pleading. It seemed impossible to adapt the text to the system of pleading since the Judicature Act without diminishing the authority which the text derives from Sir Edward Vaughan Williams.

† See American note at end of this section.

[*1633] [*1634]

If the whole rent incurs in the lifetime of the testator, the action to recover it from the executor must be brought against him in his representative character: and therefore, if the form of action be in debt, it must be in the *detinet* only, and not in the *debet* and *detinet;* and the judgment must be *de bonis testatoris* (*m*).

But in an action of debt for rent incurred after the death of the lessee, *if the executor enters* upon the demised premises, the lessor has his election, either to sue him as executor, or to charge him personally as assignee in respect of the perception of the profits (*n*). Therefore, if the action be brought in debt, the lessor may either sue the defendant as executor in the *detinet* (*o*), or in the *debet* and *detinet* (*p*), as assignee of the term (*q*). So, in covenant, the lessor has his election, *either to charge the executor as executor (*r*), or as assignee, without naming him executor, stating generally in the declaration that

(*m*) 1 Roll. Abr. 603 (S), pl. 9. Fruen *v.* Porter, 1 Sid. 379.

(*n*) Boulton *v.* Canon, 1 Freem. 337. S. C. Pollexf. 125. 1 Saund. 1, note (1) to Jevens *v.* Harridge.

(*o*) Royston *v.* Cordrye, Aleyn, 42. Hope *v.* Bague, 3 East, 2.

(*p*) Hargrave's case, 5 Co. 31. Rich *v.* Frank, Cro. Jack. 238. Caly *v.* Joslin, Aleyn, 34. 1 Saund. 1, note (1). So if the executor enters, he may be charged in the *debet* and *detinet* for the current half-year's rent which commenced before the testator died: The Bailiffs of Ipswich *v.* Martin, Cro. Jac. 411. Jevens *v.* Harridge, 1 Saund. 1. But if one sum of money is due for arrears of rent which *became due* in the lifetime of the testator, and another sum for arrears due in the executor's own time, the lessor cannot in one action charge the executor in the *detinet* for the one part, and in the *debet* and *detinet* for the other; for then two different judgments would be necessary: Salter *v.* Codbold, 3 Lev. 74: but one action may be brought for both sums in the *detinet* only: Aylmer *v.* Hide, 13 Geo. II. B. R. M. S. Selw. N. P. 610, 6th edit.: If the lessor in such case will not waive his right of demanding satisfaction out of the estate of the executor, he must bring two actions.

(*q*) In such cases it appears to have been the practice to name the defendant executor, and to state in the declaration, in the *debet* and *detinet*, the demise to the deceased, his death, the grant of administration to the defendant, his entry into the demised premises, and the subsequent accruing of rent: See the entry in Jevens *v.* Harridge, 1 Saund. 1, and the case of Caly *v.* Joslin, Aleyn, 34. But it is sufficient to charge the defendant in the *debet* and *detinet* as assignee generally, without naming him executor: See Lyddall *v.* Dunlapp, 1 Wils. 4, 5. Wollaston *v.* Hakewill, 3 M. & Gr. 297. *Infra*, note (*t*).

(*r*) Buckley *v.* Pirk, 1 Salk. 317.

the estate of the lessee in the premises lawfully came to the defendant (*s*).

If the executor does not enter (*t*), he is still chargeable *as executor

(*s*) Tilney *v.* Norris, 1 Ld. Raym. 553. S. C. 1 Salk. 309. Carth. 519. Buckley *v.* Pirk, 1 Salk. 317. 1 Saund. 1, note (1).

(*t*) Before entry and taking possession the executor of a lessee cannot be made liable as assignee of the term, but if he does enter and take possession he may be made liable as assignee; yet he may then by proper pleading limit his liability for rent to the yearly value the premises might have yielded, though it would seem he cannot so limit his liability in respect of breach of contract to repair: Rendall *v.* Andreæ, 61 L. J. Q. B. 630, 633. In this case Mr. Justice A. L. Smith adopted the view indicated by Sir Edward Vaughan Williams in the earlier editions of this work, in which the note on this point ran as follows: There seems to be some doubt, whether this distinction, as to the entry of the executor, has not, in a great measure, ceased to exist since the decision of Williams *v.* Bosanquet, 1 Brod. & B. 238. That case decided (overruling Eaton *v.* Jacques, Dougl. 455), that the assignee, in fact, of a lease may be charged as assignee on a covenant contained in it for the payment of rent, though he has never occupied or actually become possessed. And it does not appear altogether clear, whether it is not a consequence, that an executor may likewise be charged, as assignee in law, without entry: See the observation of Parke, B., at the conclusion of his judgment, in Nation *v.* Tozer, 1 Crompt. M. & R. 176. 4 Tyrwh. 565. Since these remarks were written, the point above suggested has been much discussed in the C. P., in the case of Wollaston *v.* Hakewill, 3 M. & Gr. 297. S. C. 3 Scott, N. R. 593. In that case the plaintiffs declared, as assignees of a lessor, on certain covenants contained in a lease for ninety-nine years, and alleged that all the estate of the lessee, Thomas Stead, of and in a great part of the demised premises, "by assignment thereof then made, came to and vested in the defendant, whereupon and whereby the defendant became and was possessed of the said part of the said demised premises, and continued so possessed, until the commencement of this suit:" And the plaintiffs then proceeded to assign a breach of covenant for the non-payment of certain additional rents reserved by the lease, and also a breach of covenant in not keeping the premises in repair: The defendant, by her plea, traversed "that all the estate, &c., of the said Thomas Stead, of and in the said part of the said premises by assignment thereof made, came to and vested in her, in manner and form, &c.;" upon which issue was joined: After trial and verdict for the plaintiffs, a motion for a non-suit was made on the ground of an alleged variance between the allegation in the declaration, charging the defendant generally as assignee of the lease, and the proof offered at the trial, whereby she appeared to be only executrix of an assignee, and that she had never entered or taken the profits: But the court was of opinion that there was no variance: And Tindal, C. J., in delivering the judgment of the court, said, that as to the argument that the executor, by being charged generally as assignee, becomes thereby liable *de bonis propriis*, the answer is that he may, by proper pleading, discharge himself from per-

[*1636]

in the *detinet*, because he cannot so waive the term as not to be liable for the rent as far as he has assets (*u*).

Where the executor, having entered, is sued in the *debet* and *detinet*, as assignee, for rent incurred after his entry, he cannot plead *plene administravit* (*x*), even although he be *named executor in the declaration (*y*): for if the rent be of less value than the land, as the law *prima facie* supposes, so much of the profits as suffices to make up the rent is appropriated to the lessor, and cannot be applied to anything else; and therefore the plea of *plene administravit* confesses a misapplication, since no other payment out of the profits can be justified till the rent is answered (*z*): And if judgment be given against the executor, it is *de bonis propriis* (*a*). But if the land be of less value than the rent, the executor may plead the special matter, *viz.*, that he has no assets, and that the land is of less value than the rent, and pray judgment whether he shall be charged otherwise than in the *detinet* only (*b*). If, however, such a plea be pleaded to the

sonal liability, by alleging that he is not otherwise assignee than by being executor of the lessee, and that he has never entered or taken possession of the demised premises; and from all liability as executor by alleging that the term is of no value, and that he has no assets: But that, if instead of relieving himself by pleading, he takes issue on the fact, whether he is assignee or not, the evidence that he is executor proves the affirmative of the issue that he takes the term by assignment: And his lordship referred to the case of Green *v.* Lord Listowell, 2 Irish Law Rep. 384, as having determined this precise point. See also Ackland *v.* Pring, 2 M. & Gr. 937. And as to an executor *de son tort*, see Paull *v.* Simpson, 9 Q. B. 365. This subject has been again considered in the case of Kearsley *v.* Oxley, 2 Hurl. & C. 896. In that case the declaration charged the defendant as assignee of a lease, and alleged the non-payment of rent. The defendant pleaded that administration *de bonis non* of the lessee was granted to a woman whom he afterward married, and that neither he nor his wife ever entered into nor took possession of the demised premises, nor did they vest in the defendant otherwise than as in and by the plea appeared. And it was held that this plea afforded a good answer to the action as an argumentative traverse that the defendant was assignee.

(*u*) Howse *v.* Webster, Yelv. 103. Helier *v.* Casbert, 1 Lev. 127.

(*x*) Caly *v.* Joslin, Aleyn, 34. Helier *v.* Casbert, 1 Lev. 127, 128. Sackvill *v.* Evans, Freem. 171. Buckley *v.* Pirk, 1 Salk. 317.

(*y*) See *ante*, p. *1634, note (*q*).

(*z*) Buckley *v.* Pirk, 1 Salk. 317.

(*a*) Wentw. Off. Ex. 285, 286, 14th edit. 1 Saund. 1, note (1). So if the executor be sued in *assumpsit* for use and occupation in his own time, he shall be liable *de bonis propriis*, though it be laid that the defendant occupied *as executor:* Wigley *v.* Ashton, 3 B. & A. 101. See Atkins *v.* Humphrey, 2 C. B. 654.

(*b*) Billinghurst *v.* Spearman, 1 Salk. 297. Buckley *v.* Pirk, 1 Salk. 317. 1 Saund. 1, note (1). In many instances the profits of the land may be insuffi-

[*1637]

whole rent in the declaration, it will not be a good bar unless it shows that there were no profits at all; because the executor is chargeable personally for so much of the rent as the premises are worth: If, therefore, the profits have been *less than the rent, and therefore cover a part only, that part should be confessed and the plea pleaded to the remainder (*c*). In Remnant *v.* Bremridge (*d*), which was an action for use and occupation generally, where it appeared that the defendant, who was the administrator of the original tenant under an agreement for a lease, had taken possession after the intestate's death, yet, it having been proved by the defendant, under the general issue, that the premises had been productive of no profit to him, and that eight months after the death of the intestate, he had offered to surrender them to the plaintiff, it was held that this constituted a good defense to the action.

cient for a given period, although the lease may, on the whole, be beneficial; As in respect to the rent for the occupation of premises from Michaelmas to Lady-day, especially where almost the whole profit is taken in the summer; as, formerly, in the case of a lease of tithes or of meadow grounds which are usually flooded in the winter: Wentw. Off. Ex. 289, 14th edit. So the profits for a series of years may be less than the amount of the rent, although the lease for the whole term may be of no small value; as in the case of a lease of woods, which are fellable only once in eight or nine years, and the felling has been very recent; *Ibid.* 290. In these and the like instances, the executor is personally liable only to the extent of the profits, and for such proportion of the rent as shall exceed the profits is chargeable merely in the capacity of executor, or, in other words, as far only as he has assets; and in such case, to an action brought by the lessor against him in the *debet* and *detinet*, he must disclose the matter by special pleading: Buckley *v.* Pirk, 1 Salk. 317. Toller, 280.

(*c*) Rubery *v.* Stephens, 4 B. & Adol. 241, 247. In that case the plaintiff having declared, in covenant, for rent at 26*l.* a year, the defendants pleaded that they were only chargeable as executors, and that the term came to them as such; that the premises were of less yearly value than the said rent of 26*l.*, *viz.*, of no value; and that they had fully administered, &c.: The plaintiff replied, that the premises were of the yearly value of 26*l.*, and issue was joined thereon: At the trial the yearly value was found by the jury to be 20*l.*: And the Court of King's Bench held that the replication was, in substance, that the premises were of some value; that the issue was merely informal and cured by verdict; and that the plaintiff might recover the arrears of rent at the rate fixed by the jury. See also Hopwood *v.* Whaley, 6 C. B. 744, where in a similar plea, an averment that the defendant "*did not*" was held, after verdict, to mean that he "*could not*" derive any profit from the demised premises; and it was further held that the plea might be taken distributively, and the plaintiff should recover to the extent to which defendant might, by the exercise of reasonable diligence, have derived profit.

(*d*) 8 Taunt. 191.

[*1638]

In Re Bowes (*e*) it was decided that an executor who takes possession of a leasehold of his testator is liable personally, as assign of the lease, for subsequent rent up to the letting value of the holding. And North, J., in delivering judgment says: "The law is, as the cases cited and several others clearly establish, that if an executor is sued as assign of the lease for rent accrued during the time in which he was in possession he is entitled to set up, by way of defense, that he is *only assign as executor, and that the profits or yearly value of the property amount only to a sum less than the rent. Then he must pay into Court the amount that he admits to be the full value, and if his plea is proved and that is the full value, he will be under no further liability in respect of the matter." The learned judge goes on to point out that the full value is not the actual amount received by the executor, but the amount which he might have received by the exercise of reasonable diligence.

And on the same principle, although, as it has already appeared (*f*), an executor, generally speaking, cannot waive the term, for he must renounce the executorship *in toto*, or not at all; yet, if the value of the land is of less amount than the rent; and there is a deficiency of assets, he may waive such a lease (*g*). And if there are assets to bear the yearly loss for some years, but not during the whole term, then, it seems, the executor must pay the rent as long as the assets will hold out, and must then waive the possession, giving notice to the reversioner (*h*).

But if the executor be sued *as executor*, in debt in the *detinet*, for rent incurred after the death of the testator he may plead *plene administravit:* for that is a good plea, wherever no other judgment can be given but only against the defendant as executor (*i*).

So, where the executor is charged *as executor*, in an action of covenant, for non-payment of rent incurred in the defendant's own time, *plene administravit* is a good plea, although the defendant might have been charged as assignee of the term (*k*).

(*e*) 37 C. D. 128.

(*f*) See *ante*, p. *600.

(*g*) Wentw. Off. Ex. c. 11, p. 244, c. 12, p. 290, 14th edit. Wilkinson *v.* Cawood, 3 Anstr. 909, by Macdonald, C. B. (cited by Wood, V.-C., 1 K. & J. 575). He must, it should seem, promptly offer to surrender the lease, and this will help him as to subsequent breaches of covenant: See Reid *v.* Lord Tenterden, 4 Tyrwh. 118, 120.

(*h*) Wentw. Off. Ex. *ubi supra.*

(*i*) Lyddall *v.* Dunlapp, 1 Wils. 5.

(*k*) *Ibid.* 4. Wilson *v.* Wigg, 10 East, 315. But if issue be joined upon this plea, and it should be proved that the executor has received any profit from the land, there would, it should seem,

[*1639]

*It remains to consider how these points are affected by the assignment of the lease. If the term was assigned by the testator, it seems clear that the executor cannot be charged as assignee, because the lease did not pass to him: but still he will be liable as executor in debt in the *detinet* for the rent, unless the lessor has accepted the assignee as his tenant (*l*); and even in that case, the executor will be liable *as executor*, in covenant (*m*). If the executor enters, and afterward himself assigns the lease, then he is chargeable *as assignee*, for that time only during which he occupied (*n*). And if he is sued for rent incurred since the assignment by himself, he is liable in his representative character only: Therefore, if the lessor brings an action of covenant against the executor, and charges that after the testator's death, and the proving of the will by the defendant, the demised premises came by assignment to one A. B., and that such assignee has broken the covenants in the lease, the defendant may plead *plene administravit* (*o*).

liability of executor on assignment of lease:

It must here be observed, that the Court of Common Pleas held, in the case of Tremeere *v.* Morison (*p*), that although, in respect of rent, the personal liability of an executor of a lessee does not exceed the value of the demised premises, yet this qualification does not extend to a covenant for repairs; *but that where an executor is sued as assignee on a covenant to repair, he is liable as any other assignee: Accordingly, in that case a plea by the executor that the demised premises had yielded no profit, nor had been of any value whatever, since the testator's death, with the addition of an averment of *plene administravit*, and an offer to surrender before the

personal responsibility of executor for repairs after testator's death:

be a verdict against him; for he could not legally apply the profits to any other purpose than payment of the rent: Therefore, if the land yields some profit, but less than the rent, the executor ought to plead *plene administravit præter* the profit. This doctrine, however, applies only when the action is brought on a covenant in a lease to pay the rent thereby reserved, and not to a case where the assignor of a lease sues the executor of the assignee on a covenant to perform the covenants in the lease, and to indemnify the assignor for any breach of them, notwithstanding the breach assigned in the non-payment of rent: Collins *v.* Crouch, 13 Q. B. 542.

(*l*) Helier *v.* Casbert, 1 Lev. 127. See *ante*, p.*1633.

(*m*) See *ante*, p. *1633. See Leigh *v.* Thornton, 1 B. & A. 625.

(*n*) See *ante*, p. *1631, note (*f*).

(*o*) Wilson *v.* Wigg, 10 East, 313.

(*p*) 1 Bing. N. S. 89.

breaches occurred, was held bad on demurrer (*q*). The principal ground of this decision appears to have been, that the law is clear that an action of waste will lie against an executor for any waste done in his time, as well permissive as voluntary (*r*).

This decision appears to have been to some extent confirmed by the subsequent case in Q. B. of Hornidge *v.* Wilson (*s*). That was an action of debt for rent against the defendant as assignee of a term: The defendant pleaded that he was administrator; that the premises were of less value, and had yielded less profit than the arrears of the rent, that is to say, £——; that he had paid over to the plaintiff all the profit he had received, and had fully administered, and had offered to surrender: Replication, that the premises were worth more than the sum in the plea mentioned, and a denial of the surrender: the premises were demised by a party, through whom the plaintiff claimed, to N. for twenty-one years, in 1818, the lease containing a covenant by the lessee to repair: N., in 1827, underlet to E. for twelve years, wanting ten days, at a rent exceeding that reserved in the lease: N. died in 1829, and administration was granted to the defendant in 1830: E. died in 1828, and the premises since that time had been occupied by E.'s sister, who for some years had paid the rent, out of which the plaintiff's rent was paid, but had since become insolvent, and her rent had fallen into arrear: The premises had become out of repair, and had been for some years, at the time of the com*mencement of the action, of less value than the rent reserved in the original lease; but would be of that value if repaired: The defendant had given the plaintiff notice of his willingness to surrender: And the Court of Queen's Bench held, first, that the proof of non-payment of rent by the under-lessee was no defense to this action, on the issue as to the value of the premises: Secondly, that under the same issue, the defendant could not rely on the premises being out of repair as a ground of defense, being himself bound by the covenant to repair. And in Sleap *v.* Newman (*t*), the case of Tremeere *v.* Morison was expressly recognized and acted on by the Court of Common Pleas.

In Buckworth *v.* Simpson (*u*), A. demised to B. certain lands and

(*q*) But see the observations of Bayley, B., in Reid *v.* Lord Tenterden, 4 Tyrwh. 118, 120.

(*r*) See Ives *v.* Sammes, 2 Anders, 51. 2 Inst. 302.

(*s*) 11 A. & E. 645.

(*t*) 12 C. B. N. S. 116.

(*u*) 1 Cr. M. & R. 834.

[*1642]

premises for one year certain, and then from year to year, so long as the parties should think proper, with power to determine it on giving notice to quit; and the lease contained various terms and conditions, as to the management of the lands and repairing the buildings: The lessee died, and his executors entered into the occupation of the premises, and continued to occupy and paid rent: And the Court of Exchequer held, that they were chargeable in their personal character, upon the terms contained in the original demise; their continuing to occupy, and the landlord's abstaining from giving notice to quit, raising an implied promise on their parts to abide by the terms of the original contract (*x*).

personal liability of executor of tenant from year to year continuing to occupy:

It may be useful, in this place, to recur to the remark which there has already been occasion to make (*y*), *viz.*, that if lands are leased for years by demise not under seal, and one of the two executors of the lessee enters into the demised premises, such entry does not enure as the entry of the two executors, so as to make them both liable in an action for use and occupation (*z*).

liability from occupation of co-executor:

*It has been held (*a*), that under the stat. 14 Geo. III. c. 78 (The Building Act), where a party-wall has been rebuilt, the person who is owner of and entitled to the improved rent of the adjoining premises is liable to contribution out of such rent, though he be no otherwise owner than as an executor or administrator (*b*).

liability of executor of lessee as to party-walls.

In Stephens *v.* Hotham (*c*), Wood, V.-C., made a decree for a specific performance of a covenant in a lease to take a renewed lease against the executors of the lessee, who had entered and admitted assets: His Honor acted in this case unwillingly and contrary, it seems, to his own opinion, on the authority of the decision of Shadwell, V.-C., in Phillips *v.* Everard (*d*): And the learned judge said that, in this

Liability of executor on a covenant by testator to take a renewed lease.

(*x*) See Arden *v.* Sullivan, 14 Q. B. 832, 840.

(*y*) *Ante*, p.*820.

(*z*) Nation *v.* Tozer, 1 Cr. M. & R. 172.

(*a*) Thacker *v.* Wilson, 3 A. & E. 145.

(*b*) Nor in the Metropolitan Building Act, 1855 (18 & 19 Vict. c. 122), which has taken the place of the above statute, is there anything to alter the liability of executor or administrator as established in the case above cited.

(*c*) 1 K. & J. 571.

(*d*) 5 Sim. 102.

case, the lease must be so framed that no personal liability should be incurred by the executors; though if the lease were a beneficial one claimed by them, they must enter into full covenants.

Liability of executor of vendee of a real estate to complete the purchase.

Apart from Locke King's Act, if the purchaser of a real estate dies, without having paid the purchase-money, his heir-at-law, or the devisee of the land purchased, will be entitled to have the estate paid for by the executor or administrator (*e*).† But since 40 & 41 Vict. c. 34, if the purchaser dies before paying the purchase-money, leaving it equitably charged by way of lien on the land, the devisee will take the land charged with the unpaid purchase-money, and is not entitled to have such sum discharged or satisfied out of any other estate of the testator or intestate (*f*). And in any case in which the heir or devisee may still be entitled to have the estate paid *for by the executor or administrator, as where the testator or intestate has excluded the operation of Locke King's Act by the expression of a contrary intention, if the personal estate cannot be got in, and the heir or devisee pays for the land out of his own pocket, he may afterward call upon the personal representative to reimburse him (*g*). And in such a case, if the personal estate is insufficient to perform the contract, and the agreement is on that account rescinded, yet the heir or devisee will, it should seem, be entitled to the personalty so far as it goes: And it was decided, that if by reason of the complication of the testator's affairs, the purchase-money could not be immediately paid, and the vendor for that reason rescinded the contract, yet on the coming in of the assets, the devisee of the estate contracted for might compel the executor to lay out the purchase-money in the purchase of other estates for his benefit (*h*).

But if a title cannot be made, or there was not a perfect contract, or the court should think the contract ought not to be executed, in all these cases there is no conversion of real estate into personal, in consideration of the court, upon which the right of the executor on

(*e*) Milner *v.* Mills, Mosely, 123. Broome *v.* Monck, 10 Ves. 597.

† See American note at end of this section.

(*f*) Re Cockcroft, 24 C. D. 94. See *ante*, p.*1573, note (*i*).

(*g*) Broome *v.* Monck, 10 Ves. 614, 615. 1 Sugd. V. & P. 180, 9th edit. See Lord *v.* Lord, 1 Sim. 505.

(*h*) Whittaker *v.* Whittaker, 4 Bro. Ch. C. 31. Broome *v.* Monck, 10 Ves. 597. 1 Sugd. V. & P. 180, 9th edit. And see Lysaght *v.* Edwards, 2 C. D. 499, 521.

the one hand (*i*), and of the heir or devisee on the other, depends: And therefore, if the vendor dies, the estate will go to the heir-at-law of the vendor, in the same manner as if no contract had been entered into (*k*): and the heir or devisee of the purchaser will not be entitled to the money agreed to be paid for the lands, or to have any other estate bought for him (*l*): The court cannot speculate upon what the deceased party would or would not have done; but in these cases the inquiry *must be, whether at his death a contract existed by which he was bound, and which he would be compelled to perform (*m*): That alone can give the heir of the purchaser a right to call for the personal estate to be applied, or to the personal representative of the vendor a right to call upon his heir (*n*).

Similar principles apply where a vendor dies after there is a valid contract made for the sale of land, and before the sale has been carried out. In such case the purchase-money will devolve as personal estate (*o*): And if the land contracted to be sold has not been conveyed in the lifetime of the testator or intestate, the heir-at-law or devisee will take no beneficial interest. Formerly, the executor could not himself convey the estate, the subject of the contract, but now by the Conveyancing Act, 1881, 44 & 45 Vict. c. 41, s. 4, where, at the death of any person there is a subsisting contract enforceable against his heir or devisee for the sale of the fee simple or other freehold interest descendible to his heirs general in any land, his personal representative shall, by virtue of this act have power to convey the land for all the estate and interest vested in him at his death, in any manner proper for giving effect to the contract. This section is not to affect the beneficial rights of any person claiming as heir or devisee, and is only to apply in cases of death after the commencement of the act.

Devolution of real estate contracted to be sold.

And by sect. 30 of the same act, which also is only to apply in cases of death after the commencement of the act, it is provided that,

(*i*) See *ante*, pp.*581, *582.

(*k*) Lacon *v.* Mertins, 3 Atk. 1. Atty.-Gen. *v.* Day, 1 Ves. Sen. 218. Buckmaster *v.* Harrop, 7 Ves. 341. See also Johnson *v.* Le Garde, 1 Turn. & Russ. 281.

(*l*) Green *v.* Smith, 1 Atk. 573. Broome *v.* Monck, 10 Ves. 597.

(*m*) See Curre *v.* Bowyer, 5 Beav. 6, note (*b*). *Ante*, p.*582.

(*n*) 1 Sugd. V. & P. 189, 9th edit. See also Lysaght *v.* Edwards, 2 C. D. 499, 507, *per* Jessel, M.R. And *compare* Re Thomas, 34 C. D. 166.

(*o*) See Lysaght *v.* Edwards, 2 C. D. 499. Re Thomas, 34 C. D. 166. Farrer *v.* Earl of Winterton, 5 Beav. 1. See also Frayne *v.* Taylor, 33 L. J. Ch. 228. Re Harrison, 34 C. D. 214.

"Where an estate or interest of inheritance or limited to the heir as special occupant, in any tenements or hereditaments, corporeal or incorporeal, is vested on any trust, or by way of mortgage, in any person solely, the *same shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives or representative from time to time, in like manner as if the same were a chattel real vesting in them or him; and accordingly all the like powers, for one only of several joint personal representatives, as well as for a single personal representative, and for all the personal representatives together to dispose of and otherwise deal with the same, shall belong to the deceased's personal representatives or representative from time to time, with all the like incidents, but subject to all the like rights, equities, and obligations, as if the same were a chattel real vesting in them or him; and, for the purposes of this section, the personal representatives for the time being of the deceased shall be deemed in law his heirs and assigns, within the meaning of all trusts and powers."

The result of these two sections, in cases of death after December 31st, 1881, is that where the vendor is a trustee for the purchaser, as defined by Jessel, M.R., in Lysaght *v.* Edwards (*p*), and the Court of Appeal in Re Colling (*q*), the personal representatives are, under sect. 30, the proper persons to convey, and where, though the vendor is not a trustee within that definition, there is a contract enforceable against the heir or devisee, the personal representatives will be the proper persons to convey under sect. 4 (*r*).

Liability of an executor to exonerate specific legatees:

Where a specific legacy is pledged or charged by the testator, the specific legatee is entitled to have his legacy redeemed or exonerated by the executor; and if the executor fails to perform that duty, the specific legatee is entitled to compensation to the amount of his legacy out of the general assets of the testator (*s*).

Therefore if the legacy be of a silver cup or a jewel, and it *be in pledge at the testator's death, the legatee has a right to call upon the executor to redeem it, and to deliver it to him (*t*).

(*p*) 2 C. D. 499, 507.

(*q*) 32 C. D. 333.

(*r*) See further Wolstenholme & Brinton's Conveyancing and Settled Land Acts, 6th edit. pp. 23, 83.

(*s*) Knight *v.* Davis, 3 M. & K. 358. Bothamley *v.* Sherson, L. R. 20 Eq. 304.

(*t*) Swinb. Pt. 7, s. 20, pl. 18.

[*1646] [*1647]

So in Stewart *v.* Denton (*u*), the testator, a wine merchant, directed by his will that A. B. and C. D. should carry on his trade, and he bequeathed to them his stock of wines: Before the death of the testator, certain wines belonging to him arrived in a vessel at the port of London, and the vessel was reported: After his death the wines were entered: And it was held, that the executors, and not the legatees, were chargeable with the duties.

of leaseholds:

In Marshall *v.* Holloway (*x*), A. having a leasehold estate on which he had covenanted to erect buildings within a certain time, bequeathed it and also his personal estate, subject, as to the latter, to the payment of his debts, to trustees for B. for life with several limitations over: A. died before the time expired, leaving the covenant unperformed in part: and Sir L. Shadwell, V.-C., held that his general personal estate was liable to the performance of the covenant. But it should seem that it was the clause which directed the debts to be paid out of the personal estate which governed this decision (*y*). For, unquestionably, the general rule is, that the legatees of leasehold estates must take them *cum onere* (*z*), and notwithstanding the general personal estate may remain liable to the lessor by reason of the covenants contained in the lease (*zz*).

*In Hawkins *v.* Hawkins (*a*) a testator specifically bequeathed certain personal estate upon trust for H. and her children after payment thereout of a legacy and of his debts and funeral expenses, and bequeathed his residuary estate to the plaintiff, whom he appointed his executor. Part of the residuary estate consisted of a leasehold house, held for a term of years at a rack-rent and considerably out of repair. This leasehold being worthless, the plaintiff, five months after the

(*u*) 4 Dougl. 219.

(*x*) 5 Sim. 196. *Compare* Farquhar *v.* Haddon, L. R. 7 Ch. 1.

(*y*) Fitzwilliam *v.* Kelly, 10 Hare, 266, 278.

(*z*) Hickling *v.* Boyer, 3 Mac. & G. 635. Fitzwilliam *v.* Kelly, 10 Hare, 266. Armstrong *v.* Burnet, 20 Beav. 432. Hence, if the demised premises are dilapidated, the executors may require an indemnity against their liability in this respect from the legatee before letting him into possession: Hickling *v.* Boyer, 3 Mac. & G. 635.

(*zz*) Moreover, where the burden is of such a character that the leasehold can be described as "charged with the payment of any sum or sums of money by way of mortgage, or any other equitable charge, including any lien for unpaid purchase-money," Locke King's Act will apply as mentioned above. See p. *1575.

(*a*) 13 C. D. 470, in which case Marshall *v.* Holloway, *ubi supra*, does not seem to have been cited.

[*1648]

testator's death, surrendered it to the landlord, who would only accept a surrender on payment of rent for two and a half quarters from the testator's death and a sum for dilapidations. The residuary estate as a whole was valuable. And it was held on appeal (reversing Malins, V.-C.), that the plaintiff was not entitled to have the sums which he had paid to the landlord for dilapidation and for rent subsequent to the testator's death paid out of the specifically bequeathed property, on the ground that the liability of the testator's estate to pay the future rent and its liability to damages for the dilapidations were not debts, within the meaning of the clause in the will directing the payment of debts, as between the residuary and specific legatees.

It was said by Sir George Jessel, M.R., in Bothamley *v.* Sherson (*b*), that, "In fact, the distinction seems to turn on this: is the charge one created by the testator for what has been called a temporary purpose, that is, with the view of raising money or of making use of the property (as in the case of the wines, for the purpose of the testator making use of the wines and getting them to this country), or is it from its nature a charge incident to the property, as in the case of rent on leaseholds or calls payable on railway shares? In the first case the specific legatee is entitled to have the legacy redeemed or freed from the charge. In the second case he is not entitled, because the testator is supposed to give the thing as it is, and the charge upon it is really *not in strictness an incumbrance, but something incident to the nature of the thing."

So with respect to specific legacies of shares in banking or other public companies, the legatees are, generally speaking, liable to pay the calls made subsequent to the testator's death. The cases on this subject (*c*) were fully reviewed by Romilly, M.R., in the case of Armstrong *v.* Burnet (*d*), and a distinction drawn by the learned judge, that where the interest of the testator in the subject-matter which he professes to bequeath is complete, or where it is so treated and considered by him and by all persons connected with it, the future calls fall on the legatee, and not on the general personal estate: But where further payments are required to make perfect the interest which the testator professes

of shares in public companies.

(*b*) L. R. 20 Eq. 304, 316.

(*c*) Blount *v.* Hipkins, 7 Sim. 43. Jacques *v.* Chambers, 2 Coll. 435. 11 Jur. 295. Clive *v.* Clive, Kay, 600. Wright *v.* Warren, 4 De G. & Sm. 367.

(*d*) 20 Beav. 424.

[*1649]

specifically to bequeath, then the general personal estate is applicable for that purpose (*e*).

Liability of executor as to apprentices and articled clerks.

There has already been occasion to show, that on the death of the master, the agreement for service on the part of the apprentice is at an end, generally speaking (*f*): And it seems equally well established, that the executors of the master are discharged from all agreements and covenants *for the instruction* of the apprentice, for these are considered as personal to the testator, and determined by his death (*g*). But the *covenant on the part of the master *for maintenance* of the apprentice still continues in force (*h*); and therefore the executor is liable in an action of covenant, as far as he has assets, if he neglects to maintain him (*i*). By the custom of London, the executor shall put the apprentice to another master of the same trade (*j*). As to maintenance of parish apprentices by executors, particular provisions on this head have been made by the statute 32 Geo. III. c. 57, which has already been stated at large (*k*). Where an attorney, to whom a clerk had been articled, dies before the articles expire, the Court of Chancery has jurisdiction to entertain a claim for a return of part of the premium, and such claim constitutes a debt payable out of the assets of the attorney (*l*).

(*e*) See also Moffett *v.* Bates, 3 Sm. & G. 468. The right principle appears to be that if any payments were necessary at the testator's death to constitute him a complete shareholder, they must be borne by his estate. But if he was a complete shareholder, all calls made after his death ought to be borne by the specific legatee: Day *v.* Day, 1 Dr. & Sm. 261. Addams *v.* Ferick, 26 Beav. 384. But this does not apply to calls made in the lifetime of a person who is tenant for life of the whole residuary estate (including the shares) as an entire fund: Re Box, 1 Hemm. & M. 552. See also the cases collected, *ante*, p. *1303, note (*i*).

(*f*) *Ante*, p.*722 *et seq.*

(*g*) R. *v.* Peck, 1 Salk. 66. Baxter *v.* Burfield, 2 Stra. 1266. Wadsworth *v.* Guy, 1 Keb. 820. The decision in Walker *v.* Hill, 1 Lev. 177, was *contra:* but the court denied this case in Baxter *v.* Burfield, 2 Stra. 1267. But see Cooper *v.* Simmons, 7 H. & N. 707. *Ante*, p.*723.

(*h*) R. *v.* Peck, 1 Salk. 66. S. C. *nomine* R. *v.* Pett, 1 Show. 405. Baxter *v.* Burfield, 2 Stra. 1266. Soam *v.* Bowden, Finch. Rep. 396.

(*i*) But an order of magistrates, that the executor or administrator shall maintain and provide for the apprentice is bad, and may be quashed: R. *v.* Pett, 1 Show. 405. S. C. Carth. 231. 1 Salk. 66. 3 Salk. 41. 12 Mod. 27. R. *v.* Chaplin, Comberb. 324.

(*j*) By Lord Holt, in R. *v.* Peck, 1 Salk. 66.

(*k*) *Ante*, p.*723.

(*l*) Hirst *v.* Tolson, 2 Mac. & G. 134. This case was, however, dissented from

In case a person assessed to the poor rate dies before pay*ment, it has been doubted how far the goods of the deceased in the hands of his executor or administrator are liable to answer the same: In the case of Stevens *v.* Evans (*m*), the point was discussed, but not decided, as the case was determined on its own peculiar circumstances, *viz.*, on the ground that it was necessary to convene the administrator before the justices, before a warrant could legally issue to distrain: So that the principal point was undecided; which includes in it these particulars: 1. Where the warrant of distress is made out during the lifetime of the person assessed, whether the officers can follow the goods into the hands of the administrator or any other, without taking notice of any person as executor or administrator: 2. Where the warrant of distress is not made out till after the death of the person assessed, whether on summoning the administrator, and refusal by him, the officers can distrain the goods in the hands of such administrator: 3. Whether the administrator himself may be assessed in a succeeding rate, as for arrears; and on the assessment being confirmed at the sessions upon his appeal, whether distress may be made as of his own goods, and whether for defect of distress he may be committed: 4. In what course of administration such assessment shall be estimated: And if the administrator shall plead before the justices debts of a higher nature, or insufficiency of assets, whether and how far the justices are to take notice of such plea, and how or in what manner they shall determine the same (*n*).

Liability of executor for poor rate, where testator being assessed dies before payment:

in Whincup *v.* Hughes, L. R. 6 C. P. 78, in which the plaintiff apprenticed his son to a watchmaker and jeweler for the term of six years, paying to the master a premium of 25*l.* The master duly instructed the apprentice for a year and then died. The plaintiff sought in an action against the master's executrix for money had and received to recover the whole or some part of the premium on the ground of failure of consideration. It was held that such failure being only partial the action was not maintainable. In his judgment Bovill, C. J., is reported to have said: "It does not appear to me that the case of Hirst *v.* Tolson is a satisfactory authority or one by which we are bound. It appears to be based on a misapprehension of the law on the subject, and is distinctly contrary to the opinion of the Court of Exchequer in Re Thompson (1 Ex. 864)," and Willes, J., seems to have regarded the decision of that case as sustainable on the sole ground that it was applicable to attorneys only, and was an exercise of the equitable jurisdiction of the Court of Chancery.

(*m*) 2 Burr. 1152. 1 W. Black. 284.

(*n*) Burn's Justice, title Poor, vol. iv. pp. 228, 229, edit. of 1836.

[*1651]

church-rates.

It was held in the Ecclesiastical Court that the obligation to pay a church-rate was a personal obligation: And that the executor of a deceased parishioner could be cited in respect of a church-rate due from his testator (*o*).

Debts of husband and wife.

*With respect to debts which a wife contracted while single, and which remained due at the time of the marriage, at common law the husband is liable, as long as both parties are alive: But this liability, which originated in the marriage, ceases with it: And therefore upon the death of the husband before the wife, and before payment, the debts survive against her, and the executor of the husband is discharged from them (*p*).

Again, if the husband survives the wife, he will not be individually responsible for her debts contracted before marriage, however large a fortune he may have received with her (*q*). Nevertheless, as her administrator, he will be liable to answer for them, to the extent of her assets (*r*).

This question of the ante-nuptial debts and liabilities of a married woman has been dealt with by the Married Women's Property Act, 1882, as follows:

45 & 46 Vict. c. 75, s. 13. Wife's ante-nuptial debts and liabilities.

Sect. 13. "A woman after her marriage shall continue to be liable in respect and to the extent of her separate property (*s*) for all debts contracted, and all contracts entered into or wrongs committed by her before her marriage, including any sums for which she may be liable as a contributory, either before or after she has been placed on the list of contributories, under and by virtue of the Acts relating to joint stock companies; and she may be sued for any such debt and for any liability in damages or otherwise under any such contract, or in respect of any such wrong; and all sums recovered against her in respect thereof, or for any costs relating thereto, shall be payable out

(*o*) Williams *v.* George, 3 Curt. 343. By stat. 31 & 32 Vict. c. 109, compulsory church-rates were abolished, with a saving of rates called "church-rates," but applicable for a secular purpose.

(*p*) Woodman *v.* Chapman, 1 Campb. 189.

(*q*) Wentw. Off. Ex. 369, 14th edit.

(*r*) *Ibid.* 370. Heard *v.* Stanford, Cas. temp. Talb. 173. S. C. 3 P. Wms. 409. As to what her assets comprise, see *ante*, pp.*736 *et seq.*, pp.*606 *et seq.*

(*s*) See sect. 19 of the act, and Jay *v.* Robinson, 25 Q. B. D. 467. And generally as to liability of a married woman's property, notwithstanding restraint on anticipation, see Sanger *v.* Sanger, L. R. 11 Eq. 470. London Provincial Bank *v.* Bogle, 7 C. D. 773. Re Hedgeley, 34 C. D. 379.

[*1652]

of her separate property; and, as between her and her husband, *unless there be any contract between them to the contrary, her separate property shall be deemed to be primarily liable for all such debts, contracts, or wrongs, and for all damages or costs recovered in respect thereof: Provided always, that nothing in this act shall operate to increase or diminish the liability of any woman married before the commencement of this Act for any such debt, contract, or wrong as aforesaid, except as to any separate property to which she may become entitled by virtue of this Act, and to which she would not have been entitled for her separate use under the Acts hereby repealed or otherwise, if this Act had not passed."

Sect. 14. "A husband shall be liable for the debts of his wife contracted, and for all contracts entered into and wrongs committed by her before marriage, including any liabilities to which she may be so subject under the Act relating to joint stock companies as aforesaid, to the extent of all property whatsoever belonging to his wife which he shall have acquired or become entitled to from or through his wife, after deducting therefrom any payments made by him, and any sums for which judgment may have been *bona fide* recovered against him in any proceeding at law, in respect of any such debts, contracts, or wrongs for or in respect of which his wife was liable before her marriage as aforesaid; but he shall not be liable for the same any further or otherwise: and any Court in which a husband shall be sued for any such debt shall have power to direct any inquiry or proceedings which it may think proper for the purpose of ascertaining the nature, amount, or value of such property: Provided always, that nothing in this Act contained shall operate to increase or diminish the liability of any husband married before the commencement of this Act for or in respect of any such debt or other liability of his wife as aforesaid."

Sect. 14. Husband to be liable for wife's ante-nuptial debts to a certain extent.

The general result of these sections seems to be this. Whereas at common law a husband was liable to the ante-nuptial debts of his wife to the whole extent of his property whether he knew of their existence or not, and whether he obtained any property from his wife or not: but he could not *be sued alone for such debts if his wife was alive; and he could not be sued at all for them after his wife's death, except as her administrator: now, by the effect of these sections, the husband is liable only so far as he has acquired or become entitled to property from or through his wife,

General result.

and he can be sued without the wife, and whether she be alive or dead (*t*). It must be noted, however, that these sections of the act will not apply to cases where the marriage has taken place before 9th August, 1870, which will be governed by the common law as explained above, or, in the case of marriages between 9th August, 1870, and the 31st December, 1882, inclusive, by the Married Women's Property Act, 1870, and the amending act of 1874. As regards marriages between these dates the law stands shortly thus. Where the husband and wife were married on or after 9th August, 1870, and before 30th July, 1874, sect. 12 of the act of 1870 entirely relieves the husband of all liability for his wife's ante-nuptial debts, and gives the creditor an equitable remedy only against the wife's separate estate (*u*). But the liabilities of the husband for his wife's torts committed, or breaches of contract made, before marriage were not affected by the statute. But where the marriage took place on or after July 30th, 1874, and before January 1st, 1883, the amending act of 1874 provides that the husband and wife may be jointly sued for any ante-nuptial debt of the wife or for any tort committed, or breaches of any contract made by the wife before marriage, and that the husband shall be liable in respect of such matter to the extent of the assets specified in sect. 5, which, briefly, are any property which the husband has acquired or might have acquired from or through his wife.

After the passing of M. W. P. Acts, 1870, 1874, it was held, in Re West of England Bank (*uu*), that where a woman, absolutely entitled to shares in a company, married in 1878, *and before the marriage the shares were settled absolutely upon her for her benefit, that this did not relieve the husband from his liability as a contributory under the 78th section of the Companies Act, 1862, which enacts that "if any female contributory marries either before or after she has been placed on the list of contributories, her husband shall during the continuance of the marriage be liable to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married, and he shall be deemed to be a contributory accordingly." The ground of this decision was that the section made the husband liable as the debtor, not as the husband of the debtor.

(*t*) See Beck *v.* Pierce, 23 Q. B. D. 316, 321.

(*u*) See as to the construction of this section, Sanger *v.* Sanger, L. R. 11 Eq. 470. Re Hedgeley, 34 C. D. 379. And see *ante*, p. *660, note (*x*).

(*uu*) 12 C. D. 284.

[*1655]

By the M. W. P. Act, 1882, sect. 13, a woman after her marriage shall continue to be liable in respect or to the extent of her separate property for all debts contracted and all contracts entered into before her marriage, including any sums for which she may be liable as a contributory either before or after she has been placed on the list of contributories under and by virtue of the acts relating to joint stock companies: and by sect. 14, the husband shall be liable for the debts of his wife contracted, and for all contracts entered into, by her before marriage, including any liabilities to which she may be so subject under the acts relating to joint stock companies as aforesaid to the extent of all property belonging to his wife which he shall have acquired or become entitled to from or through his wife, but he shall not be liable for the same any further or otherwise. There has been no decision as to whether the husband's liability under sect. 78 of the Companies Act, 1862, has been taken away wholly or partially by the M. W. P. Act, 1882.

On one occasion (*v*), Sir John Leach, V.-C., expressed a *doubt, whether the husband has a right to throw his wife's funeral expenses upon her separate estate.

Wife's post-nuptial debts.

With respect to debts contracted by a wife after marriage, as far as a supply of necessaries, it shall be presumed, as long as he lives, that she had the authority of the husband, as his agent, to procure them for her own use (*w*). He may consequently be compelled to pay for them, and so may his executors if he has assets: But the authority will be revoked by the death of the husband; and therefore his executor is not liable for necessaries supplied to the wife after the decease of the husband, even (according to one case) although the fact of his being dead were unknown at the time the necessaries were provided: Accordingly in Blades *v.* Free (*x*), a man who had for some years cohabited with a woman that passed for his wife, went abroad, leaving her and her family at his residence in this country, and died abroad: And it was held,

(*v*) Gregory *v.* Lockyer, 6 Madd. 90. See Bertie *v.* Chesterfield, 9 Mod. 31. Willeter *v.* Dobie, 2 Kay & J. 647. In Re McMyn, 33 C. D. 575, however, Chitty, J., held that a husband, executor of his wife's will made under a testamentary power of appointment, is entitled to retain out of her estate the expenses of her funeral, though such estate was insufficient for creditors, and her will did not contain any charge of debts and funeral expenses.

(*w*) As to the extent of this presumption and how far the agency is a question of fact, see Debenham *v.* Mellon, 6 A. C. 24.

(*x*) 9 B. & C. 167.

[*1656]

that the woman might have the same authority to bind him by her contracts for necessaries, as if she had been his wife; but that his executor was not bound to pay for any goods supplied to her after his death, although before information of his death had been received (*y*).

Work and labor with a view to a legacy.

It may be observed, that if a man performs services for the testator, as if a stockbroker transacts all the money concerns of the deceased, without any view to a reward, but in the expectation of a legacy, he cannot set up any demand for such services against the executor or administrator (*z*). Where, however, a surgeon forebore to send in his bill for medicine and attendance to a deceased patient in her lifetime *under the expectation* of a legacy; and on her death, *finding she had left him nothing, he made a claim on her executors; it was held that he was entitled to recover, no proof having been given of any *understanding* between the parties that he was to be paid only by a legacy (*a*).

Executor of tenant for life who neglects to renew lease.

In Colegrave *v.* Manby (*b*), a tenant for life of a hospital lease, who was directed to lay by, out of the rents and profits, for the purpose of paying the fine on renewal, had neglected to renew, and the lease having been renewed by the remainder-man, after his death, a reference, on a bill against his executrix, was made, to ascertain what was a reasonable sum to be paid for the renewal; and the same was ordered to be paid by the executrix.

Executors must be admitted to copyhold and pay fines.

It was once held, that executors continued the estate which their testator had in a copyhold, and, therefore, that they needed no admission: But it is now settled that they must be regularly admitted, and pay their fines (*c*).

(*y*) See *Accord.* Smout *v.* Ilbery, 10 M. & W. 11. But see also Smith's Leading Cases, 9th edit., vol. ii., p. 517 *et seq.*

(*z*) Osborn *v.* Guy's Hospital, 2 Stra. 728. Le Sage *v.* Coussmaker, 1 Esp. 188.

(*a*) Baxter *v.* Gray, 3 M. & Gr. 771. But see Shallcross *v.* Wright, 12 Beav. 558.

(*b*) 6 Madd. 72.

(*c*) Bath *v.* Abney, 1 Burr. 206. Sect. 30 of the Conveyancing Act, 1881, no longer applies as regards copyholds by virtue of sect. 45 of the Copyholds Act, 1887, and therefore copyholds held by a testator on trust, or by way of mortgage, still vest in the absence of devise in the customary heir. See *ante*, p. *1543 (*x*).

[*1657]

If a bill of exceptions was sealed by a judge and he died, a *scire facias* lay against his executors or administrators to certify it (*d*). So if the person who ought to certify a record, as a justice of the peace, &c., who hath taken a recognizance, or a judge of *nisi prius* who hath taken a verdict, or a coroner who hath taken an inquest, &c., happen to die, having such a record in his custody, it seems that a *certiorari* may be directed to his executor or administrator to certify it (*e*).

Scire facias or *certiorari* against executor of judge, &c.

*As a Court of Equity will not, *inter vivos*, compel a party to complete his gift, so it will not compel the executor to complete the gift of the testator: Therefore an act of bounty which has not been perfected by the testator is of no avail against his executor (*f*).

Executor not compellable to complete the gift of testator.

It has been said (*g*) that in the case of a conflict of evidence between living and dead persons there must be corroboration to establish a claim advanced by a living person against the estate of a dead person, but there is no rule of English law laying down such a proposition. The statement of a living man is not to be disbelieved because there is no corroboration, although in the necessary absence through death of one of the parties to the transaction, it is natural that in considering the statement of the survivor, we should look for corroboration in support of it; but if the evidence given by the living man brings conviction to the tribunal which has to try the question, then there is no rule of law which prevents that conviction being acted upon (*h*). The rule, such as it is, is a rule of prudence rather than of law, and applies to cases of alleged debt as well as to cases of alleged gift, and in an action tried by a jury it is the duty

As to corroboration in cases of claims against estate of deceased persons.

(*d*) 2 Inst. 428. By the Judicature Act, 1875, Ord. LVIII. r. 1, bills of exceptions are abolished.

(*e*) 2 Hawk. B. 2, c. 27, s. 39.

(*f*) Hooper *v.* Goodwin, 1 Swanst. 485. Cotteen *v.* Missing, 1 Madd. 176. Meek *v.* Kettlewell, 1 Phill. Ch. C. 342. Callaghan *v.* Callaghan, 8 Cl. & F. 374. Searle *v.* Law, 15 Sim. 95. Dillon *v.* Coppin, 4 M. & Cr. 647. Ward *v.* Audland, 8 Beav. 201. Cox *v.* Barnard, 8 Hare, 310. Bridge *v.* Bridge, 16 Beav. 315. Weale *v.* Ollive, 17 Beav. 252. Beech *v.* Keep, 18 Beav. 285. An executor may be compelled to execute an agreement by the testator to grant an annuity: Nield *v.* Smith, 14 Ves. 491.

(*g*) See Re Whittaker, 21 C. D. 657, 663.

(*h*) Re Hodgson, 31 C. D. 177, 183, *per* Sir J. Hannen. And see Lovesey *v.* Smith, 15 C. D. 655. Re Garnett, 31 C. D. 1. Re Farman, 57 L. J. Ch. 637, 639. Stephen's Digest of Law of Evidence, 5th edit. p. 133. See *post*, pp. *1902, *1903.

of the judge to recommend the jury to disregard the unsupported evidence of the claimant; but if they should decline to do so, and should find for the claimant, *quære* if their verdict could be interfered with (*i*). In the case of Hill *v.* Wilson (*k*), which, *however, was a case where parol evidence was tendered for the purpose of altering the terms of a written contract made with the deceased, Lord Justice James said: "The evidence given is the parol evidence of the maker of a promissory note as to a conversation alleged to have taken place between himself and the person to whom the note was given, that person being dead. Even if such evidence be legally admissible for any purpose, the interests of mankind, in my opinion, imperatively require that, unless corroborated, it should be wholly disregarded. Nobody would be safe in respect of his pecuniary transactions if legal documents found in his possession at the time of his death, and endeavored to be enforced by his executors could be set aside, or varied, or altered by the parol evidence of the person who had bound himself. It would be very easy of course for anybody who owed a testator a debt to say, 'I met the testator, and he promised he would not sue.' 'I met the testator, and I gave him the money.' 'I met the testator, and in consideration of something he agreed to relieve me.' The interests of justice and the interests of mankind require that such evidence should be wholly disregarded."

Liability of executor of a man who has delivered a deed as an escrow.

If a person, who has delivered a deed as an escrow, to be handed over to the party for whose use it is made, upon the performance of some condition, happen to die before the performance of the condition, and the condition be afterward performed, the deed is available notwithstanding the death of him that made it (*l*).

A note made payable with interest by executors at a certain period from the testator's death, bears interest from the date.

It may here be mentioned, that if a testator has given a promissory note in this form, "I promise for myself and my executors to pay A. B. or his executors, one year after my death, 300*l.*, with legal interest," and no proof of the con*sideration can be given, the note bears interest from its date, and not merely from the testator's death;

(*i*) Re Finch, 23 C. D. 267, 271, *per* Jessel, M.R.

(*k*) L. R. 8 Ch. 888.

(*l*) By Lord Ellenborough, in Copeland *v.* Stephens, 1 B. & A. 606, where *executor* appears to be printed by mistake for *escrow*.

for, in the absence of all particular proof, it must be presumed that the note was given for value (*m*).

The death of the surety does not *per se* operate as a revocation of a continuing guaranty (*n*), and his executor is liable in respect of advances made after the testator's death (*o*).

Liability of executor on a continuing guaranty of testator.

Although upon the death of the surety no express notice of the death has been given by the executor, still, if the fact of such death has come to the knowledge of the creditor, it seems in the absence of express provision that this will operate as a revocation of the guaranty, and the executor will not be liable for subsequent advances made thereunder (*p*).

But a guaranty, the consideration for which is given once and for all, cannot be determined by the guarantor, and does not cease on his death (*q*).

(*m*) Roffey *v.* Greenwell, 10 A. & E. 222.

(*n*) By sect. 18 of the Partnership Act, 1890 (53 & 54 Vict. c. 39), s. 48 of which act repeals s. 4 of the Mercantile Law Amendment Act, 1856, it is enacted that:—"A continuing guaranty or cautionary obligation given either to a firm or to a third person in respect of the transactions of a firm is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or of the firm in respect of the transaction of which the guaranty or obligation was given."

(*o*) Smith's Merc. Law, 9th ed. 474. Bradbury *v.* Morgan, 1 H. & C. 249. Harriss *v.* Fawcett, L. R. 15 Eq. 311. L. R. 8 Ch. 866, 869, *per* Mellish, L.J.

(*p*) Harriss *v.* Fawcett, *ubi sup.* Coulthart *v.* Clementson, 5 Q. B. D. 42.

(*q*) Lloyd's *v.* Harper, 16 C. D. 290.

Contracts of deceased—Rescission. Contracts made by the deceased are not, in general, ended by his death, but the liability arising out of them survives to and against his estate. But the personal representative may and should (in some cases) dispute, and, if allowable, rescind, illegal contracts. Schouler on Exrs. § 252. If the contract is still executory, *e. g.*, for the erection of a dwelling house, the executor may arrange with the other party to the contract for its cancellation, and cannot be enjoined by the heirs. Gray *v.* Hawkins, 8 O. St. 449. But as to the rights of the heirs in such case, see Haleyburton *v.* Kershaw, 8 Desaus. 105; Pringle *v.* McPherson, 2 Id. 524.

Liability for services rendered. The estate is liable for the value of professional or other services rendered to the deceased in his lifetime, such as the services of an attorney, McIntire *v.* Morris, 14 Wend. 90; with the right to

the attorney to retain moneys in hand which are subject to the lien of his claim. Hurlbert *v.* Bingham, 56 Vt. 368. So, the estate is liable for the services of a physician to the deceased, McLean *v.* Crow, 88 Cal. 644; unless the deceased is a married woman, in which case the debt is that of her husband, and not of her estate. Matter of Shipman, 1 Connoly 256. And a claim for nursing a daughter who was a minor living with her mother is a liability of the mother's estate, and not of the daughter's. Plant *v.* Plant, 39 Mich. 117. So, the estate in the hands of the personal representative is liable for the services of an architect, Matter of Odell, 1 Connoly 91; Harrison *v.* Ayres, 18 Hun 336; or for work done by a builder on a building contract for the deceased. Stevens *v.* Witter (Ia.), 55 N. W. Rep. 585.

Where the service is rendered by a relation, it is more closely scanned. It is, however, no defense against the claim of a physician that he was the brother-in-law of the decedent, Valentine *v.* Valentine, 4 Redf. 265; although a relative cannot claim as a physician for more than ordinary services; *e. g.*, for uninterrupted medical attendance for several years upon his deceased brother, with whom he resided. Estate of Moffet, 11 Phila. 79.

When services are performed, however, in the expectation of a voluntary legacy, and without agreement for compensation, there will be no liability on the part of the estate. Lee *v.* Lee, 6 Gill & J. 309; Estate of Miller, 136 Pa. St. 239; Little *v.* Dawson, 4 Dall. 111. But see, *contra*, Robeson *v.* Niles, 7 Mackey 182. But the estate will be liable for such services if there was a mutual understanding for compensation by testamentary provisions, and such provision is not made, Schwab *v.* Pierro, 43 Minn. 520; Martin *v.* Wright, 13 Wend. 460; without a formal agreement to that effect, McRae *v.* McRae, 8 Bradf. 199; or with an express agreement, Quackenbush *v.* Ehle, 5 Barb. 469; Dickerson *v.* Dickerson, 50 Mich. 37; Bell *v.* Hewitt, 24 Ind. 280; and the contract need not be for a definite amount, Thompson *v.* Stevens, 71 Pa. St. 161; but it must be proved by direct and particular evidence. Bash *v.* Bash, 9 Pa. St. 260. And see, both as to definiteness and certainty of such contract, Wall's Appeal, 111 Pa. St. 460. So, for services rendered under an agreement to convey a piece of land which was not performed. Ham *v.* Goodrich, 37 N. H. 185.

But if the provision is made as agreed, no action can be brought for the value of the services. Eaton *v.* Benton, 4 Hill 576. If, however, the provision is less than that promised, the value of the services rendered may be recovered, Porter *v.* Dunn, 43 N. Y. S. R. 193, reversing 61 Hun 310. In this case the recovery was by the husband, who was not a party to the agreement as to his wife's services. Where the testator's agreement was to devise a farm for the services, the value of the farm is the measure of damages for breach of the agreement. Jack *v.* McKee, 9 Pa. St. 235. But a paper directing the administrators of the decedent to pay A.'s widow a certain sum of money in consideration of the decedent's love for A., and of services rendered by him, has no effect as a gift, and creates no liability as an agreement to pay for the services. Stone *v.* Gerrish, 1 Allen 175.

A decedent's estate is not liable for mere acts of kindness done out of gratitude, or in the hope of a legacy, Clark *v.* Todd, 41 N. Y. S. R. 758; or for any voluntary and gratuitous service. Egerton *v.* Egerton, 2 C. E. Gr. 419; Estate of Heathcote, 16 Phila. 389. And, in general, such services as care and nursing rendered to near rela-

tives residing in the same family are *prima facie* gratuitous, and create no liability. Keller *v.* Stuck, 4 Redf. 294; Wright *v.* Senn, 85 Mich. 191; Barhite's Appeal, 126 Pa. St. 404; Hatch *v.* Hatch, 60 Vt. 160. So too, services of a domestic character. Estate of Strickland, 2 Connoly 10.

But where there is an express promise to pay for such services, a liability arises as in other cases; *e. g.*, for the service of a poor relation living in the family, Roberts *v.* Swift, 1 Yeates 209; or for the service of a son on his father's farm. Estate of Hess, 13 Phila. 285. So, on an express promise to pay the claimant an annuity for her life. Cox *v.* Maxwell, 151 Mass. 336. To establish a liability in such case the burden is on the claimant to prove an express or implied promise of compensation. Keller *v.* Stuck, 4 Redf. 294; Hayden *v.* Henderson, 21 Ill. Ap. 299; Bantz *v.* Bantz, 52 Md. 683. But an expectation of payment in the mind of both parties is sufficient. Chapman *v.* Barnes, 29 Ill. Ap. 184; De Camp *v.* Wilson, 4 Stew. (N. J.) 656; Jacobson *v.* Le Grange, 3 Johns. 199. Although a promise to increase the claimant's salary has been held insufficient to support a claim for additional wages. Marsh *v.* Tunis, 39 Mich. 100. As to the admissibility of the decedent's own declarations as evidence for and against a claim for services, see Van Fleet *v.* Van Fleet, 50 Mich. 1. See too, Pease *v.* Phelps, 10 Conn. 68, as to the availability of admissions of the executor in a suit brought against the administrator *de bonis non* for services to the testator.

A promise will sometimes be implied from the relation or circumstances of the parties, as in the case of an orphan coming to work as a servant in the testator's family and not treated as a member of the family, Lockwood *v.* Robbins, 125 Ind. 398; or of an adult niece coming to live with her uncle, Quigley *v.* Harold, 22 Ill. Ap. 269; or of an adult nephew, Jacobson *v.* Le Grange, 3 Johns. 199; or for care of an aged and helpless mother removed from her own home to that of the claimant and cared for there, Switzer *v.* Kee, 146 Ill. 577; or in the case of a father leaving his own trade to act as clerk in the store of his deceased son, with an arrangement for compensation, Killpatrick *v.* Helston, 25 Ill. Ap. 127; but not where a married daughter keeps house for her father, Houck *v.* Houck, 99 Pa. St. 552; nor where a niece claims for eighteen years' service as her uncle's housekeeper, Estate of Larkins, 17 Phila. 503; nor a claim for nursing covering a long period, and including much time when the deceased was absent in another place, Estate of McHugh, 31 W. N. C. 416; nor a claim for nursing a great-uncle (which was never made in his lifetime, nor until four years after his death). Estate of Kelly, 16 Phila. 285. And see too, Carpenter *v.* Hays, 153 Pa. St. 432.

In like manner furnishing board and lodging to a near relative will not of itself create a liability on the part of his estate, Hallock *v.* Teller, 2 Dem. 206; Wilkes *v.* Cornelius, 21 Or. 341, 348; Estate of O'Brien, 17 Phila. 456; *e. g.*, to an aged father who contributed money and supplies at times, Wright *v.* Senn, 85 Mich. 191; or to a grandchild who had no property but whose estate afterward recovered damages for the child's death by a railroad accident, Shepherd *v.* Young, 8 Gray 152; or to the claimant's mother-in-law (who said she intended to reward him and his wife), Clawson *v.* Moore, 29 Ill. Ap. 296; or a claim for services and attendance to a deceased cousin for several years, during which he had regularly paid for his board. Estate of Clark, 12 Phila. 147. On the other hand, payments by the deceased in her lifetime

to her niece for her board are evidence of the intention of the parties that she should pay for her board in support of a claim for a balance due. Estate of Armstrong, 16 Phila. 353. So, where the board was furnished under an understanding for compensation by a legacy (not made), Martin *v.* Wright, 13 Wend. 460; or under an express contract for a definite payment. Cake's Appeal, 110 Pa. St. 65. But if there is an express contract for payment, the liability will be limited to that, however inadequate it may be. Estate of Brose, 155 Pa. St. 619.

Contract for services of deceased. Where the decedent has made a contract for services to be rendered or work done by him, such as a building contract, if he dies before it is performed, his estate will be liable, in general, for the completion of the contract, Taylor *v.* Taylor, 3 Bradf. 54; and for damages for defective performance by the executor, Hall *v.* Bennett, 48 N. Y. Super. Ct. 302; and will be entitled to recovery of the amount to be paid as in case of performance by the deceased, Horton *v.* Carlisle, 2 Disney 184; or the terms of the original agreement. Gleason *v.* Beers, 59 Vt. 581; Janin *v.* Browne, 59 Cal. 37.

If, however, the contract is of a strictly personal character, and can properly be performed only by the deceased, it will not survive as a liability of his estate. Schouler on Exrs. § 253; Woerner on Admn. § 328. This has been held in the case of a contract that the deceased would minister to the comfort of his parents and live with them, and see that they were provided for. Siler *v.* Gray, 86 N. C. 566. Also, with less apparent reason, of a contract by the deceased to sell all of a certain crop for a definite term of years, Schultz *v.* Johnson, 5 B. Mon. 497 (decided on the purchaser's refusal of the first year's crop tendered by the administrator); or all of the lumber sawed for five years at a certain mill. Dickinson *v.* Calahan, 19 Pa. St. 227 (decided on the purchaser's refusal to pay for the lumber actually delivered, on the ground that the entire contract was not performed). But in Dougherty *v.* Stephenson, 20 Pa. St. 210, where the contract was for taking out a specified quantity of ore for A., A.'s estate was held for the quantity taken out before his death. In this case, however, further performance had been waived by his executors.

Liability for moneys received. The decedent's estate is liable on express or implied contract for the safe keeping and repayment of moneys committed to, or received by, him for others; although he has (without authority) invested the money and taken a note payable to the owner. Kelly *v.* Strong, 68 Wis. 152. On the other hand, the owner of the fund may ratify the act of the agent and claim the proceeds of the note taken by the deceased agent payable to himself and collected by his administrator. Thomson *v.* White, 45 Me. 445. But a claim of the executor for the money placed by him in the hands of his testator will be closely scrutinized before it is allowed. Kearney *v.* McKeon, 85 N. Y. 136.

Liability for money to be paid. The estate of a decedent is, in general, liable for the payment of his notes or other money obligations as fully as he would have been liable himself at their maturity; *e. g.*, includes an express stipulation for attorney's fees. Bond *v.* Orndorf, 77 Ind. 583. This is true even of a due bill found in the possession of the deceased at the time of his death, if supported by express oral directions to his executor as to its payment, O'Neill *v.* O'Neill, 18 S. C. 360; or a note made for a gift without fraud on creditors; Matter of Randell, 2 Connoly 29; or even a note made by an

insolvent as subscription to a college fund. University of Vermont *v.* Baxter, 43 Vt. 645. But a check given by the decedent to his son-in-law several months before his death may be shown to be without valuable consideration, although the presumption of law is in its favor. Stimson *v.* Vroman, 99 N. Y. 74.

In like manner the estate of the deceased will be liable on his agreement to pay money after the death of the promisee, Creamer *v.* Sirp, 91 Ind. 366; or that his executors shall pay after his death, Harrison *v.* Vreeland, 9 Vroom 366; or for a continuing payment for the support and maintenance of another after his own death. Stumpf's Appeal, 116 Pa. St. 33. But a promise to pay for the school expenses of a niece has been held to terminate at the promisor's death, although the expenses continued after that time without notice to the other party of the death. Browne *v.* McDonald, 129 Mass. 66.

So, the estate of a decedent is liable for debts due by him as guardian, Connelly *v.* Weatherly, 33 Ark. 658; or executor of another, Estate of Ranney, 66 How. Pr. 291; and even for a legacy where the deceased executor had become liable to pay it, Windsor *v.* Bell, 61 Ga. 671; by reason of his failure to apply assets received by him. Moore *v.* Smith, 3 Gr. Ch. 485, affd. 1 Halst. Ch. 649. But an assessment on bank stock which the deceased held as administrator of another cannot be charged against his estate, although he had voted and received dividends on the stock as administrator, and was entitled to it eventually as next of kin (the stock not having been transferred on the books of the corporation). Matter of Bingham, 127 N. Y. 296.

So, his estate may be liable as principal debtor to indemnify a surety. Estate of Hill, 67 Cal. 238. And although the surety has not paid the debt until after the death of the principal, the principal's estate will be liable for his indemnity, Morrow *v.* Morrow, 2 Tenn. Ch. 549; and the estate of a deceased co-surety will be liable for contribution. Bachelder *v.* Fisk, 17 Mass. 464. But the liability of the deceased surety, on a note held by his administrator, may be discharged in some states by the holder's want of diligence in pressing it for collection against the principal debtor. Jones *v.* Graham, 36 Ark. 383. (In this case the note was held by the administrator.)

Contract for testamentary disposition. The estate of a deceased person may become liable for the breach of an agreement on his part to make a certain person his heir. Gary *v.* James, 4 Desaus. 185; Lisle *v.* Tribble, 92 Ky. 304. But see, *contra*, where there was no consideration for the agreement, Winter *v.* Winter, 90 Mich. 197. As to such agreements, see Vol. I. pp. 176, n., 178, n., *ubi supra*. And an oral promise to adopt a child will not be enforced as a liability against the promisor's estate. Sharkey *v.* McDermott, 16 Mo. Ap. 80.

Contract for sale of land. The decedent's contract for sale of land is enforceable like any other contract against his estate. Holmes *v.* Caden, 57 Vt. 111. An action at law lies against his personal representatives for damages for its breach. Sorver *v.* Scholl, 1 Pa. Dist. R. 575. And a bill in equity may be brought against the heirs for its specific performance. For the enforcement of such contracts by the purchaser's representatives against the vendor, see Vol. II. p. 24, *ubi supra*. This is true even of a verbal contract, where the purchaser has been induced to take possession and make expensive improvements, Hunter *v.* Mills, 29 S. C. 72; but not where the purchaser is the executor and has paid nothing for the land. Walters *v.* Hill, 27 Gratt.

388. Where the contract is broken by the purchaser in the vendor's lifetime, and the vendor sues for the purchase money, his executor cannot, as heir, afterward rescind the contract for non-payment of the purchase money, but is bound by the election made by the testator to enforce the contract as a money demand. Summerhill *v.* Hanner, 72 Tex. 224. And the personal representative has no power to rescind a contract of his testator for the purchase of land. Owens *v.* Phelps, 92 N. C. 231. And see Vol. II. p. 25, *ubi supra.*

In some states the Probate Court has statutory power to direct the performance of such contract by the personal representative, Mousseau *v.* Mousseau, 40 Minn. 236; Grant Coal Co. *v.* Clary, 59 Md. 441; Sorver *v.* Scholl, 1 Pa. Dist. R. 575; on proof of payment of the consideration, Estate of Dowie, 135 Pa. St. 210; and to determine whether the land should be considered as real or personal property, Beach *v.* Norton, 9 Conn. *182. In Massachusetts, the power is vested in the Supreme Court as a court of equity. Miller *v.* Goodwin, 8 Gray 542 (1882 P. S. c. 151, § 3); Ryder *v.* Robinson, 109 Mass. 67.

Breach of covenant in deed or lease. An action will lie against the personal representatives of a grantor for breach of the covenants of quiet enjoyment and against incumbrances in his deed, Harrison *v.* Sampson, 2 Wash. 155; Hovey *v.* Newton, 11 Pick. 421, and of the covenant of warranty, Chapman *v.* Holmes, 5 Halst. 20; Lee *v.* Cooke, 1 Wash. 306; whether the breach occurs before the grantor's death or afterward. Hovey *v.* Newton, *ubi supra.* So, for breaches of covenant to pay rent, joining in one action those occurring before and those occurring after testator's death. Greenleaf *v.* Allen, 127 Mass. 248. On a covenant to pay rent contained in a lease made to the decedent his estate is liable for the rent becoming due after his death, and action lies against his personal representative for its recovery, Alsup *v.* Banks, 68 Miss. 664; Montague *v.* Smith, 13 Mass. 405; Yarborough *v.* Ward, 34 Ark. 204; Traylor *v.* Cabanne, 8 Mo. Ap. 131; whether he enters on the land or not, Howard *v.* Heinerschit, 16 Hun 177; and although he has transferred the lease to another. Pate *v.* Oliver, 104 N. C. 458. So, for breach of the deceased lessor's covenant to rebuild in case of destruction by fire. Chamberlain *v.* Dunlop, 126 N. Y. 45.

But a perpetual covenant for ground rent does not survive against the executor except as to breaches committed in testator's lifetime. Quain's Appeal, 22 Pa. St. 510. And an independent contract between adjoining owners for the maintenance of a partition fence cannot be enforced against the administrator of either. Bland *v.* Umstead, 23 Pa. St. 316.

Contract for the purchase of land. Where the decedent has contracted to buy land, the contract for the payment of the purchase money is enforceable against his personal representatives. Pate *v.* Oliver, 104 N. C. 458. They may complete the decedent's contract for purchase at a foreclosure sale, Denton *v.* Sanford, 103 N. Y. 607; although they could not rescind his contract for the purchase of land (conveyed to him and partly paid for) so as to divest the right of the heirs to the land. Matthews *v.* Dowling, 54 Ala. 202. It has been held that the administrator, who has been put to expense in perfecting the title purchased, may bring an action against the vendor on his covenants. Lowry *v.* Tilleny, 31 Minn. 500. As to suit by executor or heir for breach of covenant made to the deceased, see Vol. II. p. 25, n.

Contracts between husband and wife. At common law the contracts between husband and wife could not be enforced

as legal contracts, nor could they have been so enforced by either of them against the estate of the other. Rusling *v.* Rusling, 18 Vroom 1. But they might be enforced by a court of equity. Dorst *v.* Corle, 14 Stew. (N. J.) 45. Where such claims are not disputed, they may be proved and settled in the Probate Court; *e. g.*, a claim against the husband's estate for the wife's money loaned to him, Estate of Wormley, 137 Pa. St. 101; Estate of Heffner, 134 Pa. St. 436; proved by his will to her, Passmore *v.* Passmore, 50 Mich. 626; or by his declarations in his lifetime. Estate of Wormley, *ubi supra.* But such claim, as against his creditors, must be clearly proved. Hamill's Appeal, 88 Pa. St. 368; Estate of Heffner, *ubi supra.* In Pennsylvania, an ante-nuptial agreement between husband and wife for the support of the wife's child by a former marriage may be enforced by the Probate Court. Burkholder's Appeal, 105 Pa. St. 31. In general, an ante-nuptial agreement may be enforced against the husband's estate like any other liability. Collins *v.* Collins, 72 Ia. 104. So too, a liability arising after the wife's death; *e. g.*, for the use and occupation of her lands by the husband. Holdane *v.* Duche, 2 Dall. 176.

Joint liability. Where the deceased was jointly liable with others who survived him, an action at common law would not lie against his representatives alone or joined with the survivors, but must be brought against the survivor only, and all remedies against the estate of the deceased were confined to courts of equity. Gere *v.* Clark, 6 Hill 350. This applied to joint promises, Foster *v.* Hooper, 2 Mass. 572; notes, Poole *v.* McLeod, 9 Miss. 391; covenants under seal, Ayer *v.* Buford, 2 Mill 319; Gere *v.* Clark, *ubi supra;* Rowan *v.* Woodward, 2 A. K. Marsh. 140; and judgments. Hammond *v.* Hoffman, 2 Redf. 92. So, if both joint debtors were dead, the suit must be against the representatives of the survivor, and not of both. Grymes *v.* Pendleton, 4 Call 130; Watkins *v.* Tate, 3 Call 521.

In some of the United States it is now provided by statute that suit may be brought against the representatives of the deceased in the same manner as if the contract had been joint and several. *Iowa* (1888 R. C. § 2550), *Massachusetts* (1882 P. S. c. 136, § 8), Foster *v.* Hooper, 2 Mass. 572; *New Jersey* (1877 Rev. 742, § 3), *Rhode Island* (1882 P. S. c. 204, § 28), *Tennessee* (1884 Code, § 3486), Taylor *v.* Taylor, 5 Humph. 110. The statutory remedy at law replaces the former right to sue in equity. Curtis *v.* Mansfield, 11 Cush. 152. These statutes have been held to leave the survivor's several liability at common law unchanged. Rice, Appellant, 7 Allen 112. In New Jersey, the statute does not apply to open unliquidated claims, Wade *v.* Potter, 2 Green 278; but does apply to a joint judgment, Parker *v.* Thompson, 1 Vroom 311; or note, Thompson *v.* Johnson, 11 Vroom 220; but does not authorize an action on a joint note against the surviving maker and the representative of the deceased. Fisher *v.* Allen, 7 Vroom 203. In *Indiana* (1881 R. S. § 2311), the statute provides for filing the claim against the estate of the decedent, but prohibits suit at law against the personal representatives of one jointly, or jointly and severally, indebted on a contract or judgment. Norwood *v.* Harness, 98 Ind. 134; State *v.* Cunningham, 101 Ind. 461.

Partnership liability. In some states the statute above stated as to joint debtors has been held to apply to partnership debts, and puts partnership creditors on the same footing as individual creditors of the deceased. Sampson *v.* Shaw, 101 Mass. 145; Simpson *v.* Young, 2 Humph. 514; Dahlgren *v.* Duncan, 16 Miss. 280;

Pearce *v.* Cooke, 13 R. I. 184; Morgan *v.* Creditors, 20 Martin 599. And see Howell *v.* Teel, 2 Stew. (N. J.) 490, and note. And all partnership debts being in equity joint and several, the partnership creditor may elect to proceed first in equity against the estate of the deceased partner or against the surviving partner, Doggett *v.* Dill, 108 Ill. 560; Fillyan *v.* Laverty, 3 Fla. 72; irrespective of the insolvency of either partner. Camp *v.* Grant, 21 Conn. 41. But, in general, a partnership creditor can proceed in equity against the estate of the deceased partner only when the surviving partners are shown to be insolvent, Hammersley *v.* Lambert, 2 Johns. Ch. 509; Beaton *v.* Wade, 14 Col. 4; Bennett *v.* Woolfolk, 15 Ga. 213; and cannot in an action at law join the surviving partner and the representatives of the deceased. Richter *v.* Poppenhausen, 42 N. Y. 373; but should proceed at law against the survivors only, Grant *v.* Shurter, 1 Wend. 148; except in the case of contracts which are made expressly joint and several. Grant *v.* Shurter, *ubi supra.* The right to pursue the separate estate of the deceased partner may be released by the creditor by agreement with the deceased partner in his lifetime. Sewall *v.* Sparrow, 16 Mass. 26.

The preference of the separate creditors against the separate estate, and the partnership creditors against the partnership estate, applies to the estate of a deceased partner as well as to living partners. Wilder *v.* Keeler, 3 Paige 167; Crockett *v.* Crain, 33 N. H. 542; Walker *v.* Eyth, 25 Pa. St. 216; McCulloh *v.* Dashiell, 1 Harr. & G. 96; Simmons *v.* Tongue, 3 Bland 341; Succession of Pilcher, 39 La. An. 362; Hart *v.* Hart, 31 W. Va. 688; Mendenhall *v.* Benbow, 84 N. C. 646. And the estate of the deceased partner is entitled to have the rule applied for its benefit in administering the assets of an insolvent surviving partner. Allen *v.* Bank, 6 Lea 558. But such application of assets is equitable only, and will not be enforced to disturb legal rights already acquired, such as the lien of an execution. Baker *v.* Wimper, 19 Ga. 87; Allen *v.* Wells, 22 Pick. 453. But if the surviving partner pays the partnership debts out of his own property, he is entitled *pro rata* with individual creditors to payment of his claim against the deceased partner on the settlement of the partnership accounts. Payne *v.* Matthews, 6 Paige 19. As to presentment and limitation, such claim is on the footing of other contingent claims. Logan *v.* Dixon, 73 Wis. 533. It seems that the rule, in Pennsylvania, was formerly that, where both separate and partnership property came to the hands of the administrator, the two kinds of property were administered as a joint fund for the benefit of all creditors *pro rata.* Bell *v.* Newman, 5 Serg. & R. 77. So, in Texas, where both partners are insolvent and there is no partnership property, the individual property will go to all creditors *pro rata.* Higgins *v.* Rector, 47 Tex. 361.

Personal disability of decedent. Where the condition and relations of the deceased are such that the debt is that of another (husband or parent), it will not constitute a liability of the decedent's estate; as in case of necessaries furnished to a wife who is living with her husband, Harmon *v.* Siler (Ala.), 10 So. Rep. 430; or the medical and funeral expenses of an infant who lived with her father. Matter of Igglesden, 3 Redf. 375.

So, if the contract is not binding on account of the disability of the person, it will not be binding on his estate, as in the case of an infant's note for things which were not necessaries. Smith *v.* Mays, 9 Mass. 62. But such a contract

may be ratified by the executor so as to bind the heirs and next of kin of the deceased (a lunatic). Bullard *v.* Moor, 158 Mass. 418.

Torts of deceased. In general, the same rule prevails as to the survival of actions *ex delicto*, both as to the person injured and the wrongdoer. This is now regulated in the United States by statute. Where the rules are not modified by statute, they are generally uniform in the different states. See Vol. II. p. 20, n., *et seq.*

Injuries relating to personal property. The following actions have been held to survive against the estate of the wrongdoer: *Trover*, Terhune *v.* Bray, 1 Harr. (N. J.) 53; Coleman *v.* Woodworth, 28 Cal. 567; Elrod *v.* Alexander, 4 Heisk. 342; Nations *v.* Hawkins, 11 Ala. 859; *breach of trust*, by deceased as co-executor, Price *v.* Brown, 10 Abb. N. C. 67; *fraud*, in performance of contract, Troup *v.* Smith, 20 Johns. 33; *negligence*, in failing to record mortgage. Miller *v.* Wilson, 24 Pa. St. 114.

The following actions have been held not to survive against the estate of the wrongdoer: *Trover*, Hench *v.* Metzer, 6 Serg. & R. 272; Barnard *v.* Harrington, 3 Mass. 228; Jarvis *v.* Rogers, 15 Mass. 389; *replevin*, Merritt *v.* Lambert, 8 Me. 128; Mellen *v.* Baldwin, 4 Mass. 480; *embezzlement*, Franklin *v.* Low, 1 Johns. 396; *fraudulent warranty*, in sale of goods. Boyle *v.* Overby, 11 Gratt. 202. The rule laid down in most of the above cases has been changed by the statute of their respective states. See also Vol. II. p. 27, n.

Injuries relating to real property. The following actions have been held to survive against the estate of the wrongdoer: obstructing mill streams by a dam, Brown *v.* Dean, 123 Mass. 254; injury to buildings by explosion, Butner *v.* Keelhn, 6 Jones 60; nuisance maintained on land of deceased, Sloggy *v.* Dilworth, 38 Minn. 179; Aldrich *v.* Howard, 8 R. I. 125; mesne profits, Molton *v.* Mumford, 3 Hawks 490; but see, *contra*, Harker *v.* Whitaker, 5 Watts 474; Bard *v.* Nevin, 9 Watts 328. See too, Vol. II. p. 23, n.

Injuries relating to person or character. In general, the estate of a deceased wrongdoer is not liable for personal injuries done by him, such as *malpractice*, Vittum *v.* Gilman, 48 N. H. 416; Boor *v.* Lowrey, 103 Ind. 468; *libel*, More *v.* Bennett, 65 Barb. 338. So, for his wrongful act in an official capacity. United States *v.* Daniel, 6 How. 11; People *v.* Gibbs, 9 Wend. 29. For other cases, see Vol. II. pp. 26, n., 28, n.

*CHAPTER THE SECOND.

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR WITH RESPECT TO HIS OWN ACTS.

SECTION I.

Of the Liability of an Executor or Administrator on his own Contracts.†

In this section it is proposed to investigate, First, the liability of an executor or administrator, *as such*, in respect of his own contracts *as executor* or administrator: Secondly, The personal responsibility of the executor or administrator on his own contracts (*a*).

1st. Of the liability of an executor, as such, on his own contracts.

1st, As to the liability of the executor, not personally, but out of the assets of the testator.† It seems to have been once considered, that wherever an action was brought against an executor or administrator, on promises laid to have been made by him after the death of the testator or intestate, he was chargeable in his own right, and not in his representative capacity (*b*). The more modern authorities have, however, established, that, in several instances, the executor may be sued, *as executor*, on a promise made by him as executor, and that a declaration founded on such a promise will charge the defendant no further than a declaration on a promise of the testator.

Thus in Dowse *v.* Coxe (*bb*), the declaration stated that a *cause depending in Chancery in which Thomas Biddle was a party, was referred to arbitration, and that it was one of the terms of submission that in case either of the parties should die, the death was not to

† See American note at end of this section.

(*a*) Notwithstanding the change in the system of pleading since the Judicature Act, it has been thought more convenient to leave this section as it stood in the former editions of this work.

(*b*) See Trewinian *v.* Howell, Cro. Eliz. 91. Hawkes *v.* Saunders, Cowp. 289. Jennings *v.* Newman, 4 T. R. 348.

(*bb*) 3 Bing. 20. S. C. 10 Moore, 272.

abate the reference; that Thomas Biddle died before the making of the award; that the arbitrator awarded that the executor should pay the plaintiff 225*l.* out of the assets of Thomas Biddle; and that being so liable, the defendant, executor as aforesaid, *promised to pay:* And the Court of C. B. held that the executor was not charged thereby personally, but as executor only, and that the judgment must be *de bonis testatoris* (*c*).

So in Powell *v.* Graham (*d*), one count of the declaration stated a promise by the testator in his lifetime, that, in consideration the plaintiff would enter into his service as a nurse and housekeeper, and would continue to serve him till his death, his executor should, after his decease, pay the plaintiff 20*l.*, and then averred the defendant's liability as executor, and that in consideration thereof *the defendant promised to pay* the plaintiff that sum, whenever he, the defendant, as executor, should be requested so to do: And the Court of C. B. held, that, upon this count, the defendant was not liable individually, but as executor only: And in the same case the court held, and it is now fully settled, that a count averring an account stated between the plaintiff and the defendant as executor, and that in consideration thereof *the defendant as executor promised to pay* the balance, does not charge him personally; but he may plead *plene administravit*, and the whole judgment which can be given in favor of the plaintiff is *de bonis testatoris* (*e*): And it makes no difference whether the account be averred to have been stated of money due from the testator to the plaintiff (*f*), *or of money due from the defendant *as executor* to the plaintiff (*g*).

So it should seem that a count averring that the defendant, *as executor*, was indebted to the plaintiff for so much money, paid by the plaintiff to the use of the defendant, *as executor*, and that in consideration thereof the defendant, *as executor*, *promised to pay*, charges the defendant in his representative character only, and that he may plead *plene administravit* to it, and that the judgment ought to be *de*

(*c*) This judgment was reversed in K. B., but on a different ground, the Court of Error declining to give any opinion on this point: 6 B. & C. 255.

(*d*) 7 Taunt. 581. S. C. 1 B. Moore, 305.

(*e*) Ashby *v.* Ashby, 7 B. & C. 444.

(*f*) Secar *v.* Atkinson, 1 H. Bl. 102. Ellis *v.* Bowen, Forrest. Exch. Rep. 98. This is the common mode of declaring against executors to save the Statute of Limitations, 1 H. Bl. 105.

(*g*) Powell *v.* Graham, 7 Taunt. 580. Ashby *v.* Ashby, 7 B. & C. 444: but see Rose *v.* Bowler, 1 H. Bl. 108. 2 Saund. 117, *h*, note to Coryton *v.* Litheby.

bonis testatoris (*h*). For instance, suppose two persons are jointly bound as sureties, and the one dies, and the survivor is sued and obliged to pay the whole debt: In such case, if the deceased had been living, the survivor might have sued him for contribution in an action for money paid; and it should therefore seem that he is entitled to sue the executor of the deceased for money paid to his use as executor (*i*). Again, a plaintiff may in many cases have an advantage in proceeding against the assets rather than against the executor personally: the executor in his individual capacity may be insolvent; in his character of executor he may have assets adequate to answer any claim: and when the money is paid to his use as executor, justice seems to require that the person who has made the payment should have the liberty of looking to the fund which the executor has in that character (*k*).

*But a count alleging that the defendant, *as executor*, was indebted to the plaintiff for so much money *lent* by the plaintiff to the defendant, *as executor*, and that the defendant, in consideration thereof, *as executor promised to pay*, charges him personally, and he cannot plead *plene administravit*, and the only possible judgment is *de bonis propriis* (*l*).

(*h*) Ashby *v.* Ashby, 7 B. & C. 448, 449, 451, 452. This point was conceded by the counsel and the court, in Corner *v.* Shew, 3 M. & W. 350.

(*i*) Ashby *v.* Ashby, 7 B. & C. 449, 451, 452, by Bayley, J., and Littledale, J. See also Batard *v.* Hawes, 2 E. & B. 287, 298, where these *dicta* were regarded as strong authority for holding, that if one of several co-contractors be compelled by suit to pay the whole debt, he may sue the executors of another of them, *who has died before payment* for contribution.

(*k*) Ashby *v.* Ashby, 7 B. & C. 449. But it must not be understood that one who has paid off a debt of a testator or advanced money to an executor to enable him to do so, can follow the assets into the hands of another to whom the executor has aliened them: Haynes *v.* Forshaw, 11 Hare, 104, *ante*, p. *801, note (*b*).

(*l*) Rose *v.* Bowler, 1 H. Black. 108. Powell *v.* Graham, 7 Taunt. 586. An executrix of a testator kept an executorship account with a bank, and having a power under the will to mortgage the real estate in aid of the personalty deposited with the bank the title deeds of part of the testator's real estate as security for the balance. The account having been considerably overdrawn and the moneys to a great extent misapplied, the bank having no notice of such misapplication, and the security proving insufficient to pay the balance, applied to prove against the testator's estate for the difference. It was held on appeal by L.JJ. James and Mellish that the bank was not entitled to prove, for that a person cannot by contract with an executor acquire a right to prove against the estate, though the executor has power to give him a lien on specific assets. Farhall *v.* Farhall, L. R. 7 Ch. 123.

[*1664]

And so it is of a count which charges that the defendant, *as executor*, was indebted to the plaintiff *for money had and received* by the defendant, *as executor*, for the use of the plaintiff, and that in consideration thereof, the defendant, *as executor, promised to pay;* for to such a count *plene administravit* cannot be pleaded, and the judgment on it must be *de bonis propriis* (*m*). But in Ashby *v.* Ashby (*n*), Lord Tenterden said, that although he felt himself bound by the authorities on the point, yet if the matter were quite new, it might, perhaps, be as well to hold that a plaintiff might elect to treat the receipt of the money as an act done by the executor in his character of executor, and take his *chance whether he would get paid out of the assets or not, and that if he elected so to treat it, then he must show that the money came into the defendant's hands because he was executor: And Bayley, J., concurred in this opinion, and put the following case: "Suppose a bill payable to the testator were remitted from a foreign country, half the amount applicable to the personal use of the testator, and the other half to be paid over by him to some other person: Before the bill arrives, the testator dies, and his executor receives the money: It is possible that he may not have received advice as to the mode in which it is to be applied, until after he has applied it in the ordinary course of administration: He may be insolvent in his individual capacity; and it would be hard that the party, under such circumstances, should not have his election to be paid out of the funds of the testator": The learned judge, however, proceeded to observe, that the authorities were so strong, that he felt himself bound by them, although his reason was not convinced (*o*).

Again, a count upon a promise by the defendant *as executor*, for

(*m*) Rose *v.* Bowler, 1 H. Black. 198. Jennings *v.* Newman, 4 T. R. 347. Brigden *v.* Parkes, 2 B. & P. 424. Powell *v.* Graham, 7 Taunt. 585, 586. Ashby *v.* Ashby, 7 B. & C. 444.

(*n*) 7 B. & C. 448.

(*o*) 7 B. & C. 450. But Littledale, J., expressed his opinion that, if the case were perfectly new, the defendant ought to be held personally liable upon the count in question; and observed, that where an executor receives money to the use of a particular individual, it operates as a specific appropriation of that money belonging to the party, and he, in his individual capacity, must be liable for the money so received, it having nothing to do with the accounts of the testator: 7 B. & C. 452, 453. Perhaps an illustration of this view may be found in Churchill *v.* Bertrand, 3 Q. B. 568, where an intestate had granted an annuity to the plaintiff, and, after his death, his administratrix procured it to be set aside for a defect in the memorial; and it was held that the consideration money for the annuity could not be recovered back as money had and received *by the intestate* for the use of the plaintiff.

[*1665]

use and occupation after the death of the testator, has been held to charge the defendant personally, and not in his character of executor (*p*). So a count alleging that *the defendant, *as executor*, was indebted to the plaintiff for *goods sold and delivered* by the plaintiff to the defendant, *as executor*, at his request, or for *work done* and materials for the same used and provided by the plaintiff for the defendant, *as executor*, at his request, and that the defendant, *as executor*, promised to pay, charges the defendant in his personal and not in his representative character; for such a claim must necessarily be for debts due from the defendant in his own right, as no goods can be sold to or work performed for another in his representative character (*q*). The common count *for interest* charges the executor personally; for it alleges a forbearance *at his request:* But a count charging that the defendant is indebted *as executor* on a contract by the testator to pay interest as long as the debt should be forborne, charges him as executor only (*r*).

In actions like those above mentioned, which are brought against an executor, in the character of executor, to recover the demand out of the testator's estate, a promise by the executor is a mere *nudum pactum*, if there were no assets (*s*). But it is not necessary to aver in the declaration that the defendant had assets (*t*).

2ndly, It is now proposed to investigate the personal responsibility of an executor or administrator, arising from his own contracts.

2. Of the personal liability of an executor on his own promise:

A promise by an executor or administrator to pay a debt of the testator, or to answer damages, will not make him personally liable, unless there be a sufficient consideration to support the promise: For a bare promise by the executor *does not make him liable out of his own estate, but he is still chargeable only as executor, and to the extent of the assets in his hands, in the same manner as he would have been had no such promise been made (*u*). And by the Statute of Frauds, the executor or administrator will not be liable, unless the promise is in writing. It is clear, how-

(*p*) Wigley *v.* Ashton, 3 B. & A. 101. But see Atkins *v.* Humphrey, 2 C. B. 654.

(*q*) Corner *v.* Shew, 3 M. & W. 350. See *post*, p.*1677, *et seq.* as to charging an executor for the expenses of the funeral.

(*r*) Bignell *v.* Harpur, 4 Exch. 773.

(*s*) 1 Saund. 210, c. 211, note (1) to Forth *v.* Stanton. Pearson *v.* Henry, 5 T. R. 8. Rann *v.* Hughes, 7 T. R. 350, note (*a*).

(*t*) Powell *v.* Graham, 7 Taunt. 580. Dowse *v.* Coxe, 3 Bingh. 20. See also Pinchon's case, 9 Co. 90, *b*.

(*u*) Reech *v.* Kennegal, 1 Ves. Sen. 126.

ever, that although the promise be in writing, it is of no more effect since the statute than before, unless it be by deed or there be a good consideration for it. Hence, since the statute, there are two things necessary for the validity of the promise of the executor or administrator to pay the debt of the testator, or answer damages, out of his own estate: 1st, the common law requires that there should be a sufficient consideration to support the promise; 2nd, the statute adds a still further requisite, that the promise should be in writing (*x*). It is therefore expedient to examine, in the first place, what is a valid consideration for a promise by an executor or administrator to charge him *de bonis propriis:* and then to inquire what is a reduction of the promise into writing, sufficient to satisfy the Statute of Frauds.

Before entering upon this inquiry, it may be remarked, that a promise by an *administrator*, by word of mouth, made *before* administration granted, may, under certain circumstances, be binding upon him afterward: Thus in Tomlinson *v.* Gill (*y*), a person promised the widow of an intestate, that if she would permit him to be joined in the letters of administration, he would make good any deficiency of assets to discharge the intestate's debts; And Lord Hardwicke held that this promise was not within the Statute of Frauds, because the party promising was not administrator at the time of making the promise; and it was no answer to say *that he was administrator afterward (*z*): His lordship further held, that this was an engagement which could be made good only in a Court of Equity; because it was not made to the creditors, who could, therefore, claim only through the widow; but that they were entitled in equity to the performance of the promise made to her; because it was to be considered there as made to her in trust for them (*a*).

(*x*) 29 Car. II. c. 3, s. 4. Rann *v.* Hughes, 4 Bro. P. C. 27, Toml. edit. S. C. 7 T. R. 350, note (*a*). Hawkes *v.* Saunders, Cowp. 289. Philpot *v.* Briant, 4 Bingh. 717. But see Herbert *v.* Powis, 1 Bro. P. C. 355, Toml. edit.

(*y*) Ambl. 330.

(*z*) See *ante*, pp. *342, *551, *552, as to the difference between the relation of probate and letters of administration to the death of the testator and intestate.

(*a*) This case was recognized by Lord Northington in Griffith *v.* Sheffield, 1 Eden, 77; and by Sir W. Grant, in Gregory *v.* Williams, 3 Meriv. 590. A promise, however, by a party who is neither the executor nor administrator, to pay a debt of a deceased person, is merely *nudum pactum;* and even if such a party should give his promissory note to the creditor for the debt without any other consideration for making it, the payment of the note cannot be enforced

[*1668)

what is a sufficient consideration for his promise:

1st, What is a valid consideration:† If a creditor, at the request of an executor, *forbears* to sue him, that is considered a sufficient consideration to charge him *de bonis propriis*, whether he has assets or not at the time of the promise; and therefore it is not necessary to aver in the declaration that he had assets: As if A., to whom the testator was indebted, comes to the executor, and says that he intends to sue him for the debt, whereupon the executor promises, in consideration that the plaintiff will forbear him for a reasonable time, to pay him, and A. accordingly forbears to sue him for a reasonable time, that is a good consideration to charge the *defendant, in an action upon the case, out of his own estate, without assets; for by this promise it is intended as well to forbear to sue the executor, as to forbear the debt; and a forbearance of a suit is a good consideration, without assets at the time of the promise (*b*). So if a man declares upon a promise against an administrator, that the intestate was indebted to him in 10*l.* by bond, and died, and the defendant being his administrator, in consideration of the premises, and that the plaintiff *would spare him* till such a time after, promised to pay him the debt; and avers that he spared him till the time, and the defendant had not paid him, &c., though he did not say that he would spare him *the debt*, or to *sue him*, yet it shall be so intended, and therefore the consideration is good (*c*). So it was said by Hale, C. J., that though a bare accounting by the executor with a creditor of his testator will not bind the executor to pay *de bonis propriis*, yet a promise in consideration of forbearance

by the payee, if at the time of the making thereof there was no personal representative of the debtor: Nelson *v.* Serle, 4 Mees. & W. 795, overruling Serle *v.* Waterworth, *ibid.* 9. *Ante*, p.*213, note (*g*). If, indeed, the note be made payable at a future date, *and the maker be entitled to take out administration*, as being the widow or next of kin of the debtor, perhaps the creditor might enforce the note; because the effect of giving it is to preclude the payee during its currency from suing the maker, in case the latter should take out administration: 4 M. & W. 9. Where a widow gave a promissory note "for value received by my late husband," it was held that the note was valid on the face of it: Ridout *v.* Bristow, 1 Cr. & Jerv. 231, *post*, p.*1671, note (*m*).

† See American note at end of this section.

(*b*) Johnson *v.* Witchcott, 1 Roll. Abr. 24, tit. Action sur Case (V.), pl. 33, upon a demurrer, where the defendant pleaded that he had no assets when the promise was made. It is said in Bane's case, 9 Co. 94, *a*, that if there be no assets, *it shall be given in evidence:* but this opinion has been overruled since: See the cases in the text, *supra*.

(*c*) Gardener *v.* Fenner, 1 Roll. Abr. 15, tit. Action sur Case (S.), pl. 3. Chambers *v.* Leversage, Cro. Eliz. 644.

will (*d*). Also where the plaintiff having a debt owing to him from the testator on a simple contract, the executor, in consideration the plaintiff would forbear to sue him until such a time, promised to pay, and the plaintiff averred that he did forbear accordingly, this is a good promise: but if the *heir* had promised, on forbearance of the suit, to pay this debt, no *assumpsit* would have been against him, because without consideration; for the heir is not chargeable to any debt without specialty (*e*). So where in *assumpsit*, the plaintiff declared, that J. S. devised a legacy to him, and made the defendant executor, and the plaintiff intending to sue him for the legacy, the defendant, in consideration of *forbearance, promised to pay him; the defendant pleaded divers bonds and judgments, and no assets *ultra;* upon which the plaintiff demurred, and had judgment without argument; for it was not material whether he had assets or not; for he was charged upon his own promise, in consideration of forbearance; and a forbearance of a suit for a legacy was a sufficient consideration; although it was said, that if it had appeared by the declaration that the plaintiff had no cause of action, the forbearance would not be sufficient (*f*). It is true that it is now settled that no action at law lies for a general legacy (*g*), but in this case the forbearance might have been to sue in Chancery, or, formerly, in the Ecclesiastical Court, for the legacy, and then the consideration may, perhaps, be a good one (*h*). So if A. together with B. is bound to C. for the proper debt of B., and A. pays the money, and B. dies and makes D. his executor, and D., in consideration that A. will forbear to sue him until such a time, promises to pay him, this is sufficient consideration to support the promise (*i*). So if an executor be indebted to J. S. in 100*l.* who demands the money, the executor is chargeable only in respect of assets, and not otherwise; but if he promises to pay the debt *at a future day*, it becomes *his own debt*, and to be satisfied out of *his own estate* (*k*). So B. having died indebted to G. for work and labor done, his executors signed the following memorandum on the back of G.'s account: "Mr. G. having

(*d*) Hawes *v.* Smith, 2 Lev. 122.

(*e*) Fish *v.* Richardson, Yelv. 55, 56.

(*f*) Davis *v.* Reyner, 2 Lev. 3. S. C. *nomine* Davis *v.* Wright, 1 Ventr. 120. 2 Keb. 758.

(*g*) Deeks *v.* Strutt, 5 T. R. 690. See *post*, pp. *1828, *1829.

(*h*) See 2 Saund. 137, *d*, note to Barber *v.* Fox.

(*i*) Scott *v.* Stevens, 1 Sid. 89.

(*k*) Goring *v.* Goring, Yelv. 11. See Reech *v.* Kennegal, 1 Ves. Sen. 126.

[*1670]

consented to wait for the payment of the within account, we, as the executors of B., engage to pay Mr. G. interest for the same at 5*l.* per cent. until the same is settled:" And it was held, that the executors were personally liable to pay the debt and interest (*l*).

*Accordingly, where two executors gave a promissory note to the plaintiff in the following words, "*As executors* to the late T. T., we severally and jointly promise to pay to N. C. the sum of 200*l.* on demand *with lawful interest* for the same:" And the Court of C. B. held that they were personally liable on the instrument, upon the ground that the promise, from the circumstance of interest being added, necessarily imported a payment at a future day, and an executor promising to pay a debt at a future day makes the debt his own (*m*).

*Again, where the plaintiff declared in *assumpsit* that the defend-

(*l*) Bradly *v.* Heath, 3 Sim. 543.

(*m*) Childs *v.* Monins, 2 Brod. & Bing. 460. S. C. 5 Moore, 281. See also Barnard *v.* Pumfrett, 5 M. & Cr. 71. Lucas *v.* Williams, 3 Giff. 151. See also Ridout *v.* Bristow, 1 Cr. & J. 231, where a widow had given a promissory note for "value received by my late husband;" and it was held that the note was valid on the face of it; and Bayley, J., said, "If an administratrix takes upon herself to give a security, which may have the effect of inducing forbearance, and which purports to bind her individually, is it competent for her to say, you must prove assets? To my mind, the act of giving such a security, supersedes the necessity of an investigation as to there being assets: It seems to me that the words 'value received by my late husband,' do not make the proof of assets necessary; and I go still further and say, that it was not competent for her to show that there were no assets." But where an executrix gave an acceptance for a debt, due from her testator, taking an engagement from the drawer to renew the bill from time to time, until sufficient effects were received from the estate of the testator, it was held that this meant sufficient effects in the ordinary course of administration; and that she had not precluded herself from first applying assets to pay 3,000*l.*, to trustees for her own use, in discharge of a bond given by her husband before marriage to that effect, before she paid the acceptance: Bowerbank *v.* Monteiro, 4 Taunt. 844. Where a bill is indorsed to a person as executor, and he again indorses it, he becomes personally liable, unless he indorses it in such terms as to negative personal liability: Bills of Exchange Act, 45 & 46 Vict. c. 61, s. 31 (5). See sect. 16 (1) as to indorsements limiting or negativing liability. And by sect. 26 (1) of this act, it is enacted that where a person signs a bill as drawer, indorser, or acceptor, and adds words to his signature indicating that he signs for or on behalf of a principal, *or in a representative character*, he is not personally liable thereon: but the mere addition to his signature of words describing him as an agent, *or as filling a representative character*, does not exempt him from personal liability. See King *v.* Thom, 1 T. R. 489. Alexander *v.* Sizer, L. R. 4 Ex. 102.

[*1671] [*1672]

ant's testator was indebted to A., who, after the testator's death, assigned the debt to the plaintiff, and appointed him to receive it to his own use, and that the defendant, in consideration that the plaintiff would accept the defendant as his debtor, promised to pay it to the plaintiff; it was held that this was not a sufficient consideration to support the promise, so as to charge the defendant *de bonis propriis* (*n*): But if the promise had been in consideration of forbearance by such assignee of the debt to sue the executor or administrator, that would have been sufficient (*o*): for it is sufficient, in the case of any other debtor, whom the assignee of the debt forbears, at his request, to sue (*p*).

So where the plaintiff declared in *assumpsit* that the husband of the defendant was indebted to the plaintiff in 50*l.* for beer, and died intestate, and administration was committed to the defendant, and that afterward, she, in consideration that the plaintiff would deliver to her six barrels of beer, promised to pay to the plaintiff, as well the 50*l.* due by the intestate, as for the six barrels delivered to herself, and that he thereupon delivered the six barrels; it was held that the action was well brought against her on her own *assumpsit*, and that the judgment should be for both debts *de bonis propriis* (*q*).

So where an attorney delivered up deeds to an executor, which he was not obliged to do till the bill was paid, and these deeds were of great use to the executor in several suits which were then carrying on; it was held, that this was a sufficient consideration to make the executor liable to the attorney's whole demand, whether there were assets or not (*r*).

*It should seem that the having assets is a good consideration for a promise by an executor or administrator to pay a debt of the deceased, or to answer damages out of the executor's own estate: Thus in Reech *v.* Kennegal (*s*), Lord Hardwicke observed, "At law, if an executor promises to pay the debt of his testator, a consideration must be alleged: *as of assets come to his hands;* or of forbearance; *or if an admission of assets* is implied by the promise; otherwise it will be but *nudum pactum*, and not personally binding upon the executor."

(*n*) Forth *v.* Stanton, 1 Saund. 210.

(*o*) Pitt *v.* Bridgwater, 1 Roll. Abr. 20, pl. 11. Russel *v.* Haddock, 1 Lev. 188. 1 Saund. 210, note (1).

(*p*) Reynolds *v.* Prosser, Hardr. 71. Oble *v.* Dittlesfield, 1 Ventr. 153. 1 Saund. 210, note (1).

(*q*) Wheeler *v.* Collier, Cro. Eliz. 406.

(*r*) Hamilton *v.* Incledon, 4 Bro. P. C. 4, Toml. edit.

(*s*) 1 Ves. Sen. 126.

[*1673]

So it was held in Atkins *v.* Hill (*t*) and in Hawkes *v.* Saunders (*u*), that the circumstance of the executor having assets sufficient to pay all the debts and legacies, was a sufficient consideration to support a promise to pay a legacy, so as to render the executor individually liable on that promise in an action at law (*x*): And although the doctrine of these cases, as far as the liability of an executor to be sued at law for a general legacy, has been since exploded (*y*), yet it should seem that their authority, with respect to the sufficiency of the consideration in question to support a promise to pay debts, remains unimpeached. The consequence is, that if an executor or administrator promises, in writing, that, in consideration of having assets, he will pay a particular debt of the testator or intestate, he may be sued on this promise in his individual capacity, and the judgment against him will be *de bonis propriis* (*z*).

It may here be observed, that in cases like the above-mentioned, where the nature of the debt is such as necessarily to make the defendant liable personally, the judgment will be *de bonis propriis*, although he be charged as promising *as executor* (*a*).

what is a sufficient reduction of the executor's promise into writing.

*It remains to consider 2ndly, What is a sufficient reduction into writing of the promise of an executor or administrator.† The fourth section of the Statute of Frauds (29 Car. II. c. 3), enacts (*inter alia*), "that no action should be brought, whereby to charge any executor or administrator, upon any special promise to answer damages out of his own estate, or whereby to charge the defendant, upon any special promise to answer for the debt, default, or miscarriage of another person, &c., &c., unless the *agreement* upon which such action shall be brought, or some memorandum or note thereof, shall be *in writing* and *signed* by the party to be charged therewith, or some other person thereunto by him lawfully authorized."

The word "agreement" used in this section means the *consideration* of the promise (*b*): and, therefore, it was held in the case of Wain *v.*

(*t*) Cowp. 284.

(*u*) Cowp. 289.

(*x*) See also *Accord.* Barnard *v.* Pumfrett, 5 M. & Cr. 71, *per* Lord Cottenham.

(*y*) See *post*, p.*1828.

(*z*) Trewinian *v.* Howell, Cro. Eliz. 91. And see Rann *v.* Hughes, 7 Term Rep. 350, note (*a*).

(*a*) Powell *v.* Graham, 7 Taunt. 585. Wigley *v.* Ashton, 3 B. & A. 101. Corner *v.* Shew, 3 M. & W. 350.

† See American note at end of this section.

(*b*) 1 Saund. 211, note (2).

[*1674]

Warlters (*c*), that the *consideration* of the promise, as well as the promise itself, must be in writing, otherwise it is void: This doctrine was very much doubted in several subsequent cases, but was fully established by subsequent decisions (*d*). It was, however, sufficient, if the consideration could be gathered from the whole tenor of the writing; and it was held that it was not necessary that it should be stated on the face of it in express terms (*e*). This rule having proved a grievance it was enacted by stat. 19 & 20 Vict. c. 97 (Mercantile Law Amendment Act), s. 3, that no special promise *to answer for the debt, default, or miscarriage of another person*, shall be deemed invalid, by reason only that the consideration for such promise does not appear in writing or by necessary inference from a written document.

Personal responsibility of executor on a submission to arbitration.

This may be the proper place to consider how far an executor or administrator is liable upon a submission to *arbitration of a claim upon him as the representative of the deceased. Where the executor submits in broad terms, to pay whatever shall be awarded, and the arbitrator awards that he shall pay a certain sum, he is personally bound to perform the award, whether he has assets or not (*f*); For if an executor or administrator thinks fit to refer generally all matters in dispute to arbitration, without protesting against the reference being taken as an admission of assets, it will amount to such an admission (*g*). Thus in Barry *v.* Rush (*h*), an action of debt was brought on a bond given by the defendant, by which he, as administrator, bound himself, his heirs, &c.: The condition, after reciting that the plaintiff and defendant had agreed to submit to arbitration certain disputes which had arisen between the plaintiff and the defendant's intestate, touching certain articles of agreement between the intestate and the plaintiff's testator, was for the performance of an award to be made by the arbitrators concerning the matters assigned, and also concerning all other matters, &c., between the said parties: The declaration stated, that the arbitrator had awarded that the defendant, as administrator, should pay to the plaintiff, as executrix, 298*l.* on the 27th June following, and that the

(*c*) 5 East, 10.

(*d*) Saunders *v.* Wakefield, 4 Barn. & Ald. 595. 1 Saund. 211, note (*d*).

(*e*) 1 Saund. 211, note (*d*).

(*f*) See Lord Kenyon's judgment, in Pearson *v.* Henry, 5 Term Rep. 7.

(*g*) By Lord Eldon in Robson *v.* ——, 2 Rose, 50. See also Wansborough *v.* Dyer, 2 Chitt. Rep. 40.

(*h*) 1 Term Rep. 691.

[*1675]

parties should execute general releases: The defendant pleaded *plene administravit*, and that at the time of entering into the bond, he had no assets: To this plea there was a demurrer: And the Court of K. B. held that the plea was bad; on the ground that the bond was a personal engagement by the defendant to perform the award. So in Worthington *v.* Barlow (*i*), where the arbitrator, under a reference between A., a claimant on the estate of an intestate, and B. the administrator ascertained the amount of the demand, and directed that B. should pay it; it was held that B. could not afterward object that he had no assets, but that he might be attached *for nonpayment: And Lord Kenyon said, that as the arbitrator had awarded the defendant to pay the amount of the plaintiff's demand, it was equivalent to determining, as between these parties, that the administrator had assets to pay the debt. So in Riddell *v.* Sutton (*k*), an administratrix referred to the final award of an arbitrator certain disputes between the plaintiff and herself as executrix, to be finally settled by the said arbitration: The arbitrator found a balance due from the defendant to the plaintiff, and without finding assets, awarded her to pay it on or before a certain day: And the Court of Common Pleas held that *plene administravit* was no bar to an action on the award.

But the personal liability of the executor or administrator may obviously depend not only on the terms of the submission, but also on those of the award. Thus in Pearson *v.* Henry (*l*), the defendant, as administrator, submitted to an award, and the arbitrator awarded that a certain sum was due from the intestate's estate, *without awarding that the administrator was to pay it:* And it was held that the administrator was not thereby precluded from denying that he had assets (*m*). So in Love *v.* Honeybourne (*n*), a cause and all matters in difference between the plaintiff's testator and the defendant were referred to arbitration by a judge's order, and the arbitrator, upon an investigation of the accounts, ascertained that there was a certain balance against the testator, and, by his award, directed the plaintiff to pay that sum *out of the assets*, on or before a certain day: The court was moved to set aside this award for uncertainty, on the ground that the arbitrator had not ascertained whether there were any assets in the hands of the executor to pay the sum awarded: The court refused to set aside the award, on the ground that although

(*i*) 7 Term Rep. 453.
(*k*) 5 Bing. 200.
(*l*) 5 T. R. 6.
(*m*) See Worthington *v.* Barlow, 7 T. R. 453.
(*n*) 4 Dowl. & Ryl. 814.

[*1676]

in that respect it might be uncertain, yet that would not vitiate the other part of the award, which was unquestionably certain, namely, that part which found *that the plaintiff, as executor, was indebted, upon a balance of accounts, to the defendant: But Lord Tenterden observed, that it appeared to him, that the latter part of the award did not conclude the question of assets, but left it open: And Holroyd, J., remarked that the arbitrator had awarded that the money should be paid by the plaintiff out of the assets upon a day which he fixed, *i.e.*, if there were any assets in his hands at that time; and that if the plaintiff had fully administered at that time, he would not be bound to pay (*o*).

Liability of executor for acts done under his power of attorney.

It was held by the Court of K. B. in Gardner *v.* Baillie (*p*), that a power of attorney from an executor, to ask, demand, sue for and receive all sums due to him as executor, and to do all further acts for receiving debts, &c., with power to do and act touching the premises as effectually as the principal could do, does not authorize the attorney to bind his principal, by accepting bills for debts due from his testator. But in Howard *v.* Baillie (*q*), the Court of Common Pleas inclined to hold, that a letter of attorney given by an executor to A., enabling him to transact the affairs of the testator, in the name of the executor, as executor, and to pay, discharge, and satisfy all debts due from the testator, conveyed a sufficient authority to A. to accep at bill of exchange, in the name of the executor, drawn by a creditor for the amount of a debt due from the testator, so as to make the executor personally liable: And clearly, if the executor admits that such a bill, which has been so accepted by A. with the knowledge of the executor, is for a just debt, and that it ought to be paid, it affords sufficient evidence of an authority given by him to A. to accept that particular bill; without resorting to the letter of attorney (*r*).

Liability of executor with respect to the expenses of the funeral.

With respect to the liability of an executor or an administrator to the expenses of the funeral of the deceased,† it appears to be clear, that if an executor or administrator gives *orders for the funeral, or ratifies or adopts the acts of another party, who has given such orders, he makes himself liable individually, and not in his representative character, for the reason-

(*o*) See also Re Joseph and Webster, 1 Russ. & M. 486.

(*p*) 6 T. R. 591.

(*q*) 2 H. Black. 618.

(*r*) *Ibid.*

† See American note at end of this section.

able expenses (*s*). And notwithstanding that, generally speaking, an administrator is not bound, as such, by his acts done before the letters of administration were obtained (*t*), yet it should seem that if, before taking out letters, he gives orders, or sanctions the orders which another person has given for the funeral of the deceased, he will be thereby bound, after he has become administrator (*u*), to satisfy the charges incurred under such orders (*x*).

Where executor or administrator has neither given nor adopted directions for burial.

A question, however, of some difficulty arises, in cases where the executor or administrator has neither given nor adopted any directions for the burial, but he is sought to be charged on an implied contract arising out of his situation, with reference to his character and the estate of the deceased. According to one report of the case of Ashton *v.* Sherman (*y*), Lord Holt laid it down that if A. employs B. to work for C., without warrant from C., A. is liable to pay for it: an executor is not liable to pay for funeral expenses unless he contracts for them." This *dictum* is not mentioned by the *other reporters (*z*) of the same case; and, indeed, from the nature of the facts, it is difficult to see how the remark could have been introduced into the discussion: But an anonymous case is to be found in the twelfth volume of Modern Reports (*a*), which contains the mere statement that "an executor is not liable to pay for funeral expenses, without he contracts for it:" And this probably is but a reference to the *dictum* of Lord Holt, in-

(*s*) Brice *v.* Wilson, 8 A. & E. 349, note (*c*). Corner *v.* Shew, 3 Mees. & W. 350. And it seems from the decision in Reg. *v.* Price, 12 Q. B. D. 247, which establishes the legality of cremation, that an executor or administrator who cremates the dead body of the testator or intestate, either in accordance with directions contained in the will or in the exercise of his own discretion, is entitled to be paid the reasonable expenses of so doing, in the same manner as he would be entitled to be paid the expenses of burial. See *ante*, p. *835, note (*a*).

(*t*) See *ante*, pp. *342, *344.

(*u*) But the estate of a deceased person is not liable on a contract made by a person, although for the benefit of the estate, unless that person, by subsequently obtaining letters of administration, becomes authorized to bind the estate, and ratifies the contract: Re Watson, 18 Q. B. D. 116. 19 Q. B. D. 234. See *ante*, p. *554.

(*x*) Lucy *v.* Walrond, 3 Bing. N. C. 841. In this case, the action was sustained against the defendant in his character *as administrator;* but the point, as to whether he could be properly sued otherwise than individually, was precluded by the circumstance of the defendant having paid money into court.

(*y*) Holt, 309.

(*z*) 1 Lord Raym. 263. Carth. 429. 12 Mod. 152. Comberb. 444, 449.

(*a*) P. 256.

[*1679]

serted in the report of Ashton *v.* Sherman. Recent decisions, although the propriety of them has been much questioned (*aa*), must be considered as having overruled this doctrine: and it seems now established, that in the absence of evidence to charge any other individual, an executor *with assets* is answerable in point of law, without any express contract, for the funeral expenses of his testator, suitable to his degree (*b*). Thus in Tugwell *v.* Heyman (*c*), Lord Ellenborough held, that if executors neglect to give orders for the funeral of the testator, and have sufficient assets for that purpose, they are liable upon an implied promise, to the person who furnishes the funeral in a manner suitable to the testator's degree and circumstances. So in Rogers *v.* Price (*d*), it appeared that the testator died in Wales, at the house of his brother, who thereupon sent for the plaintiff, an undertaker residing at a distance: The plaintiff afterward furnished the funeral, and the brother of *the deceased attended it as chief mourner: It was admitted that the funeral was suitable to the degree of the deceased: There was no evidence of any contract made by the defendant, or that he knew of the funeral until it had taken place: But the Court of Exchequer held that, assuming him to have assets, he was liable, upon an implied promise, to pay the expenses of the burial.

Executor with assets liable without any express contract to pay for funeral expenses in absence of evidence to charge any other person.

However, it was held by Patteson, J., in Brice *v.* Wilson (*e*), that, "it has been decided by several cases that an executor is liable upon an implied promise, at common law, to pay reasonable expenses for the funeral of his testator, *where no other person is liable upon an express contract,* although he does not give orders for it: But there is no case which goes the length of deciding that if the funeral be

(*aa*) See Corner *v.* Shew, 3 M. & W. 356.

(*b*) See the remark of Bayley, J., in Hancock *v.* Podmore, 1 Barn. & Adol. 262; and of Jervis, C. J., in Ambrose *v.* Kerrison, 10 C. B. 779. And Sir G. Jessel, in Sharp *v.* Lush, 10 C. D. 468, 472, said: "It appears to me that the executor is liable to pay the funeral expenses, even without an order on his part, if he has any assets available for the purpose; and it has also been decided that the funeral expenses are a first charge on the assets. Even *if the executor never receives assets* to the amount of the funeral expenses, he is liable to pay, although he did not order the funeral. It is part of his official duty to bury the deceased, so that he is liable to pay the funeral expenses without an order." See also Williams *v.* Williams, 20 C. D. 659.

(*c*) 3 Campb. 298.

(*d*) 3 Younge & Jerv. 28.

(*e*) 8 A. & E. 349, note (*c*).

[*1680]

ordered by another person to whom credit is given, the executor is liable:" In that case the testator's widow ordered an extravagant funeral without the knowledge of the executor, who, however, was present at the funeral, and did not object to it as extravagant: The undertaker, in his bill, charged the widow, but subsequently applied for payment to the executor, who promised to pay: An action was brought against the executor in his own right, in which he suffered judgment by default: And it was held that the defendant was liable to the whole amount of the reasonable charges for the funeral as ordered by the widow; not, it must be observed, on the ground of a common law liability of the defendant as executor, but on the ground of his having rendered himself liable by adopting the acts of the widow, and treating her as his agent (*f*). But the learned judge, in this case, probably intended to lay down no more than that the executor, where credit has been given to another person, is not liable to *the undertaker;* for it should seem, that if the person, who gives the order for the funeral, pays for it, he may have an action against the executor for the *reasonable expenses: Accordingly, it was held in Green *v.* Salmon (*g*), that in an action (brought before Lord Denman's Act, making interested witnesses competent) by an undertaker for funeral expenses, against a person not the executor, a residuary legatee was a competent witness for the plaintiff: For although a person, other than the executor, might have rendered himself liable to the undertaker, the estate was ultimately answerable for so much of the cost as an executor might reasonably pay, and no more; and the witness, therefore, had no disqualifying interest (*h*).

These authorities do not involve the decision of the question whether, in an action on the promise implied by law on the part of an executor to pay for the funeral of his testator, the judgment should be *de bonis propriis* or *de bonis testatoris*, or consequently whether *plene administravit* is a good plea: It should seem, however, that the naming the defendant executor in the claim is surplusage, and that he is liable *de bonis propriis*, if liable at all (*i*): but that, since the maintenance of the action is dependent on the fact of his being an executor *with assets*, it is a good defense under the general issue that

(*f*) See Walker *v.* Taylor, 6 C. & P. 752.

(*g*) 8 A. & E. 348.

(*h*) But an heir-at-law who has voluntarily paid the funeral expenses of an intestate cannot claim to have them refunded out of the intestate's personal estate: Coleby *v.* Coleby, 12 Jur. N. S. 496, *coram* Stuart, V.-C.

(*i*) See Hayter *v.* Moat, 2 M. & W. 56.

[*1681]

his testator left none. And accordingly, in Corner *v.* Shew (*k*), the Court of Exchequer held, that the only point really determined, by Tugwell *v.* Heyman, and Rogers *v.* Price, was that the law implies a contract on the part of an executor, who has assets *personally*, and not in his *representative character;* inasmuch as the implied promise cannot place the defendant in a different condition than if he had made an express contract to the same effect; which certainly would have bound him personally only.

Liability of executor continuing the trade of testator.

With respect to the liability of an executor or administrator *carrying on the trade of the deceased,† the general principle is, that a trade is not transmissible, but is put an end to by the death of the trader: Executors, therefore, have no authority in law to carry on the trade of their testator, and if they do so, unless under the protection of the Court of Chancery, they run great risk, even although the will contains a direction that they should continue the business of the deceased (*l*). The case of an executor or administrator, in this respect, is very hard: For, if the trade be beneficial, the profits are applicable to the purposes of the trust, and the executor or administrator derives no personal benefit from the success: If, on the contrary, the trade prove a losing concern, the executor, on failure of assets, will be personally responsible for the debts contracted in the business since the testator's death, to the extent of all his own property; also, in his person; and he may be proceeded against as a bankrupt though he is but a trustee (*m*). Accordingly, in a case (*n*) where the *executors

(*k*) 3 M. & W. 350.

† See American note at end of this section.

(*l*) Barker *v.* Barker, 1 T. R. 295. *Ex parte* Garland, 10 Ves. 119.

(*m*) *Ex parte* Garland, 10 Ves. 119. *Ex parte* Richardson, 1 Buck, 209. Owen *v.* Delamere, L. R. 15 Eq. 134. Fairland *v.* Percy, L. R. 3 P. & D. 217. The creditor who trusts the executor has a right to say, "I have the personal liability of the man I trusted, and I have also a right to be put in his place against the assets," that is, "I have a right to the benefit of indemnity or lien which he has against the assets devoted to the purposes of the trade;" that is, the court recognizes the equity and puts the creditor in the place of the trustee. But if the trustee has wronged the trust estate there is no such equity, because the *cestuis que trust* are not taking the benefit: in such a case the defaulting executor or trustee, not being himself entitled to an indemnity, except upon terms of making good his default, the creditors are in no better position, and are therefore not entitled to have their debts paid out of a specific part of the assets directed by the testator to be employed in trade, unless the default is made good: Re Johnson,

(*n*) See next page.

of a deceased partner continued his share of the partnership property in trade for the benefit of his infant daughter, the Court of K. B. held, that they were liable upon a bill drawn for the accommodation of the partnership, and paid in discharge of a partnership debt; although their names were not added to the firm, but the trade was carried on by the other partners under the same firm as before, and the executors, when they divided the profits and loss of the trade, carried the same to the account of the infant, and took no part of the profits themselves (*o*).

It is therefore obvious, that where partners covenant that they and their respective executors and administrators will continue partners for a certain term of years, and one of them dies before the term has expired, his executors or administrators cannot be compelled to become partners personally (*p*), *though the covenant is binding on the estate of the deceased partner in their hands (*q*).

15 C. D. 548. *Ex parte* Edmonds, 4 D. F. & J. 488. See *post*, p. *1900. A creditor, being a vendor of goods, sold and delivered to an executor, carrying on trade under the directions of a will, has in his own right no lien either upon the trade assets or upon the specific goods sold by him: Re Evans, 34 C. D. 597. Strickland *v.* Symons, 26 C. D. 245. Nor will he, as judgment creditor of the executor, be entitled to take in execution the testator's assets, although lapse of time and an enjoyment of the assets in a manner inconsistent with the trusts of the will, coupled with the consent of the beneficiaries, may raise an inference of a gift of the assets by them to the executor, and entitle his judgment creditor to take them in execution. But when the possession and the time which has elapsed are in accordance with the trusts of the will, no such inference can arise: Re Morgan, 18 C. D. 93. If a firm in which the will authorized the employment of the assets becomes bankrupt, no proof can be made against the estate of the bankrupts in respect of the money so employed: Scott *v.* Izon, 34 Beav. 434.

[*1684]

(*n*) Wightman *v.* Townroe, 1 M. & S. 412.

(*o*) See also *Accord.* Labouchere *v.* Tupper, 11 Moo. P. C. 198; in which case Lord Justice Knight Bruce further laid down that the executor is personally liable, as above stated, though he carries on the trade avowedly as executor, and whether he is entitled or not entitled to be indemnified out of the testator's personal estate, and whether it is sufficient or insufficient for the purpose, and notwithstanding the testator was bound by a covenant with his partner to continue the trade in partnership. His lordship also pointed out that the propriety of his executor's conduct, as between himself and those beneficially interested in the testator's personal estate, cannot give the creditors of the trade, becoming so after the death, the rights of creditors of the testator. See further Re Leeds Banking Company, L. R. 1 Ch. 231.

(*p*) Downs *v.* Collins, 6 Hare, 418, 438. See *per* James, L.J., in Baird's case, L. R. 5 Ch. 733. *Ante*, p. *1520, note (*n*).

(*q*) *Ibid.* See also *ante*, p. *1626 *et*

The rights of creditors of executors carrying on the trade of a testator have been much discussed in the House of Lords in the recent case of Dowse *v.* Gorton (*r*). In that case executors carried on the business of their testator under a trust contained in his will, and a question arose between creditors of the testator and the trade creditors of the executors as to priority. The order made by the Court of Appeal was as follows: That the executors of the testator are entitled as against and in priority to the persons to whom he was indebted at the time of his death to be indemnified out of such part of the estate as has been acquired by the executors since his death against debts and liabilities incurred by the said executors in carrying on his businesses to the full amount of such debts and liabilities, or if the said executors be in default to the testator's estate then to the full amount of such debts and liabilities after deducting the amount in respect of which the said executors are so in default.

Rights of creditors of the executor.

Lord Herschell, in dealing with this order, says (*rr*): "The right of the executors to an indemnity out of such part of the estate as has been acquired by them since the death of the testator, and the limitation of their indemnity to that part of the estate appears to have been based, in the judgment of Lindley, L.J., upon the view that this after-acquired property was not assets of the testator against which his creditors could have execution. He says: 'Now, what is the right of the creditor of the deceased? He is a creditor, he has no equitable rights as distinguished from legal rights against the assets of the deceased. His right is to sue the executor at law, and get a judgment at law, *de bonis testatoris*, and under that to seize under a *fi. fa.* the assets of the deceased *in the hands of the executors at the time of his death, but he has nothing to do with future-acquired property.' Cotton, L.J., I gather, took the same view, though he does not state the proposition definitely. After saying that the executors could not, so far as regards the original assets of the testator, claim an indemnity as against the creditors of the testator, he continues: 'Where there are liabilities undertaken under the direction of the testator's Will, they are entitled to an indemnity in respect of them out of the assets acquired by the executors after

seq., as to the executors of deceased shareholders in Public Companies. If such an executor purchases further shares, he is, of course, personally liable in respect of these: Spence's case, 17 Beav. 203.

(*r*) [1891] A. C. 190.

(*rr*) *Ibid.* p. 197.

[*1685]

the testator's death. The creditors of the testator say, there are assets of our testator, and he could not, by declaring a trust for you to perform, give you any right of indemnity as against the property That is not correct.' With all deference I am unable to concur in the distinction drawn between the assets which come into the hands of the executors at the time of the death of the testator, and property which in their capacity of executors, they afterward acquire. The case of Abbott *v.* Parfitt (*s*) appears to be a distinct authority that property so acquired is as much assets of the testator as that which was in his possession at the time of his death. It was there held that the price of goods sold to the defendant by the executors who had carried on their testator's business, no part of the materials of which had belonged to the testator, would, when recovered, be assets of the testator; and I do not think it is possible, on principle, to maintain the suggested distinction. Could an executor having property in his hands, to which his only title was that of executor, plead to an action by a creditor *plene administravit?* It seems to me that such a question admits of but one answer. I could, indeed, understand the view that, if the executors had come under liability in acquiring any asset in their hands, they would be entitled to an indemnity against such liability out of that asset before it could be made available for creditors. But this is not the effect of the declaration made by the Court below. All after-acquired property, however acquired, even though it has been purchased with the proceeds of the sale of a part of the *estate possessed by the testator at the time of his death, is treated as one subject-matter out of which the executors are entitled to their indemnity. I cannot think that the executors can be so entitled, if they cannot make good their claim to an indemnity generally, against the whole of the testator's estate. I think it is clear that where a business has been carried on under such an authority as was conferred on the executors by the Will of this testator, they would be entitled to a general indemnity out of the estate as against all persons claiming under the Will. But I take it to be equally clear that they could not, by reason only of such authority, maintain this right against the creditors of the testator. The executors would, no doubt, be entitled to carry on a business of the testator for such reasonable time as was necessary to enable them to sell his business property as a going concern, and would even, as against his creditors, be entitled

(*s*) L. R. 6 Q. B. 346.

[*1686]

to an indemnity in respect of the liabilities properly incurred in so doing. But in the present case the businesses were carried on for a period of three years, and it is obvious that this was not done merely for the purpose of effecting a sale. I agree with the contention of the learned counsel for the appellants, that the mere fact that a creditor stood by under such circumstances, and did not immediately take steps to enforce his debt, would not of itself entitle the executors, as against him, to be indemnified out of the estate. But when all the circumstances of the case are considered, I do not think that this is the true view of them. . . . Under the circumstances, I think that the proper inference is, that the businesses were not merely continued for the benefit of those interested under the Will, but that they were also carried on with the assent of the appellants for the purpose of securing the payment of the debt due to them. If this be the true view, it can hardly be contested that the executors of the testator are, as against the appellants, entitled to be indemnified out of their testator's estate against the liabilities which they have properly incurred."

So Lord Macnaghten says (*ss*): "If a testator's business is carried on after his death, in accordance with the provisions of *the Will, the indemnity of the executors is only limited by the amount of the assets which the testator has authorized the executor to employ in the business. If the business is carried on by the executors at the instance of the creditors without regard to the terms of the Will, the executors, I suppose, have the ordinary rights of agents against their principals. But I can see no reason in any case for limiting the indemnity to that portion of the assets which may have come into existence or changed its form since the testator's death. An unsecured creditor has no right against any specific part of the assets. He can have no greater right in respect of one part of the assets than another. It is all one estate. His right is to see that the executors get in the estate and apply it in due course in payment of debts, and he may sue in equity, as the appellants have done, to enforce that right."

Lord Macnaghten, in dealing with the course that a creditor of the testator should pursue, says (*sss*): "Creditors of a deceased trader whose business has been continued by his executors, when they come for an administration decree, must treat the continuance of the busi-

(*ss*) [1891] A. C. pp. 207–208. (*sss*) *Ibid.* p. 203.

ness either as proper or improper. If the business has been properly continued as between the executors and the creditors, or if the creditors choose to treat it so, which comes to the same thing, the executors are entitled to be indemnified against all liabilities properly incurred in carrying it on. If it has been improperly continued, and the creditors choose to treat the continuance as improper, they may proceed in the proper way to make the executors accountable for the value of the assets used in carrying on the business, and they may also follow the assets and obtain a charge on the business in the hands of the executors for the value of the assets misapplied, with interest thereon; and they may enforce the charge if necessary by means of a receiver and sale. Then there can be no room for any claim to indemnity on the part of the executors. The charge in favor of the trust estate must be satisfied first. The executors can only take what is left."

*If an executor, without any authority from the will (*t*), take upon himself to trade with the assets, the testator's estate will not be liable in case of his bankruptcy; the testator's creditors and legatees will have a right to prove demands for such of the assets as have been wasted by the executor in the trade, in proportion to their respective interests: and with respect to such of the assets as can be specifically distinguished to be a part of the testator's estate, they will not pass to the assignees; the executors holding them *alieno jure*, they will not be liable to his bankruptcy (*u*).

Again, the testator may, by his will, qualify the power of his executor to carry on trade, and limit it to a specific part of the assets, which he may sever from the general mass of his property for that purpose; and then in the event of the bankruptcy of the executor, the rest of the assets will not be affected by the commission, although the whole of the executor's private property will be subject to its operation (*x*). Accordingly, in Cutbush *v.* Cutbush (*y*), a testator

(*t*) In Kirkman *v.* Booth, 11 Beav. 273, 280, Lord Langdale said, it was a rule without exception, that, to authorize executors to carry on a trade, or permit it to be carried on with the assets, there ought to be the most distinct and positive authority and direction given by the will for that purpose. See further as to what shall constitute such an authority and direction, Travis *v.* Milne, 9 Hare, 141.

(*u*) *Ex parte* Garland, 10 Ves. 110. Toller, 487. *Ex parte* Richardson, 1 Buck, 202. *Ante*, p. *559.

(*x*) *Ex parte* Garland, 10 Ves. 110. Toller, 487. *Ex parte* Richardson, 1 Buck, 202. Thompson *v.* Andrews, 1 M. & K. 116.

(*y*) 1 Beav. 184.

[*1688]

directed his widow to carry on his business, until his youngest child should attain twenty-one; and for that purpose gave her the "entire use, disposal, and management of the capital, stock, and effects which should be in, due, and owing, or belonging to him in his said trade," at the time of his decease, and he authorized his executors to augment the capital employed therein: The executors renounced, and the widow took out administration: And Lord Langdale, M.R., held *that the specified property of the testator only (and not his general assets) was liable to the debts contracted by the widow in carrying on the trade (z).

It must be observed, that when the law speaks of executors not carrying on the business of their testator, it means, that they are not to buy and sell: There are many cases, when executors not only may, but are bound to continue the business to a certain extent: Thus if a party contracts for himself and his executors to build a house, and dies, the executors must go on, or they will be liable in damages for not completing the work (a). So if a party engages to build a house, and dies, after having procured all the necessary materials, it should seem that his executors ought to complete the work, and not dispose of the materials at a loss to the estate (b). Again, if a bookseller undertakes to publish a work in parts, and, before the completion he dies, a subscriber has a claim upon the estate to complete the work; for otherwise those parts which he has purchased, upon the faith of the work being completed, are useless: So if a man makes half a wheelbarrow, or half a pair of shoes, and dies, the executors may complete them, and they are not bound to sacrifice the property of their testator by selling articles in an imperfect state (c). So if the deceased died possessed of a manufactory, his executors, it should seem, would be justified in continuing the works for a reasonable time, if this should be requisite for the purpose of selling the machinery and premises to advantage; and they will not, at least in equity, be charged with any loss sustained in em-

(z) A direction in a will, that the testator's trade shall be carried on, does not of itself authorize the employment in the trade of more of the testator's property than was employed in it at his decease; nor does such a direction coupled with a direction that the testator's debts shall be paid, authorize a mortgage of his real estate, not employed at his death in the trade, for the purposes of carrying it on: M'Neillie v. Acton, 4 De G. M. & G. 744.

(a) Marshall v. Broadhurst, 1 Cr. & J. 405. *Ante*, p. *1596.

(b) 1 Cr. & J. 405. See also Edwards v. Grace, 2 M. & W. 190.

(c) 1 Cr. & J. 405. See Dakin v. Cope, 2 Russ. Ch. C. 170.

ploying the *assets in so continuing the trade, if they act *bona fide*, and according to the best of their judgment (*d*).

It may here be mentioned, that if executors, who are by the testator's will to carry on his trade for the benefit of his family, suffer a person to conduct the trade in his own name, such person may bring actions in his own name for goods sold by him, though afterward accountable to the executors (*e*).

In Sterndale *v.* Hankinson (*f*), the facts were, that A., the widow and administratrix of B., continued B.'s trade after his decease: B., at his death, was indebted to C. on the balance of an account: A. continued to receive goods from and to make payments to C. as B. had done, and she was charged in account by C. with the debt: The payments made by her to C. exceeded the debt; but a balance was ultimately due to C.; And it was held, that B.'s debt was discharged by A.'s payments, and that the ultimate balance could not be proved as a debt against B.'s estate.

(*d*) Garrett *v.* Noble, 6 Sim. 504. See also *Accord.* Collinson *v.* Lister, 20 Beav. 356, 365, 366, by Romilly, M.R.

(*e*) Wilkes *v.* Lister, 6 Esp. 78.

(*f*) 1 Sim. 393.

---

† *Executor's contracts.* In general, the contract of an administrator or executor binds him individually, and not the estate, Baker *v.* Fuller, 69 Me. 152; Hallock *v.* Smith, 50 Conn. 127; Seip *v.* Drach, 14 Pa. St. 352; Greening *v.* Sheffield, Minor (Ala.) 276; Steele *v.* Steele, 64 Ala. 488; Kerchner *v.* McRae, 80 N. C. 219; Fitzhugh *v.* Fitzhugh, 11 Gratt. 300; Ness *v.* Wood, 42 Minn. 427; unless personal exemption from liability is expressly stipulated for. Bott *v.* Barr, 95 Ind. 248; Douglass *v.* Leonard, 17 N. Y. Supp. 591; and although the contract was contemplated by the deceased. Yarborough *v.* Ward, 34 Ark. 204.

1. *Contracts in course of administration.* This rule applies to contracts even for necessary administration expenses, Taylor *v.* Mygatt, 26 Conn. 184; or goods purchased for the estate, Harding *v.* Evans, 3 Port. 221; Lovell *v.* Field, 5 Vt. 218; Vanderveer *v.* Ware, 65 Ala. 606; or for services to the estate. Manning *v.* Osgood, 151 Mass. 148; Douglass *v.* Leonard, 17 N. Y. Supp. 591; Markham *v.* Washburn, 18 N. Y. Supp. 355; McEldery *v.* McKenzie, 2 Port. 33. So, for collateral received from a debtor of the estate for collection and appropriated by the administrator after payment of the amount actually due to the estate. Cronan *v.* Cotting, 99 Mass. 334. And the claim for labor so performed does not constitute a set-off against the suit of the administrator for moneys of the estate loaned to the defendant. L'Engle *v.* L'Engle, 19 Fla. 714.

An executor or administrator has no authority to create debts against the estate, Rich *v.* Sowles, 65 Vt. 135; or render it liable for money had and received, Hailey *v.* Wheeler, 4 Jones 159; or even for advances borrowed to

[*1690]

pay debts of the estate, Succession of Mansion, 34 La. An. 1246; whether loaned to the executor on his individual credit, Alterange *v.* Christiansen, 48 Mich. 60; or on the credit of the estate. Winston *v.* Young, 52 Minn. 1. An administrator's surety is not liable for debts so contracted by him. Taylor *v.* Mygatt, 26 Conn. 184. The personal representative may, however, have allowance in his account for debts incurred and paid by him for the proper administration of the estate, Daily *v.* Daily, 66 Ala. 266; and equity may direct the application of funds of the estate to the payment of the obligation incurred. Thomson *v.* Smith, 64 N. H. 412.

In Connecticut, the statute (1882 P. L. 146) now provides for the direct enforcement of such obligations against the estate or against the representative personally. But this statute does not apply to expenses incurred before appointment. Brown *v.* Eggleston, 53 Conn. 110. In Georgia, a similar act applies by its terms to contracts made before the passage of the act. Brightwell *v.* Jordan, 74 Ga. 486.

In general, an executor or administrator will not, for want of sufficient consideration, become individually liable on his promise to pay a distributive share, Adams *v.* Adams, 16 Vt. 228; or a debt due by a distributee, McElwee *v.* Story, 1 Rich. 9; nor on a verbal promise to pay a legacy. Smith *v.* Carroll, 112 Pa. St. 390. But an executor takes an assignment of a distributive share subject to a mortgage made by the distributee which he had promised to pay. Herbert *v.* Smith, Saxt. 141.

Funeral expenses. The law implies a promise on the part of the executor or administrator to pay the funeral expenses so far as he has assets, Hapgood *v.* Houghton, 10 Pick. 154; or to reimburse another who has paid them, Patterson *v.* Patterson, 59 N. Y. 574; where he assented to the payment. Estate of France, 75 Pa. St. 220. He is liable even for expenses incurred without his authority, Campfield *v.* Ely, 1 Green 150; before his appointment, Rappelyea *v.* Russell, 1 Daly 214; and *a fortiori* for expenses incurred at his request. Trueman *v.* Tilden, 6 N. H. 201. There is, however, no implied liability for unusual and unnecessary expenses, especially where the ordinary expenses have been already paid by the executor. Hewett *v.* Bronson, 5 Daly 1.

Counsel fees. Where an executor or administrator employs counsel in the matters of the estate, he is individually liable for his compensation, and suit can be brought against the estate, Platt *v.* Platt, 105 N. Y. 488; Budlong *v.* Clemens, 3 Dem. 145; Clopton *v.* Gholson, 53 Miss. 466; Wait *v.* Holt, 58 N. H. 467; especially where the executor has expressly made himself so liable. Clarke *v.* Alexander, 71 Ga. 500. But a promise to pay attorney's fees incurred by his predecessor will not be implied from his knowledge that the attorney had rendered services. Manning *v.* Leighton, 65 Vt. 84. In Indiana, the attorney may elect to sue either the estate or the executor individually. Long *v.* Rodman, 58 Ind. 58. And in Illinois, it has been held that he can only recover against the estate. Greene *v.* Grimshaw, 11 Ill. 389. The executor cannot create a lien on the property of the estate for the security of the attorney. McMahon *v.* Allen, 4 E. D. Sm. 519. And see, as to the obligation upon the administrator *de bonis non* to pay fees incurred by the executor as sole legatee (the estate being sufficient after payment of creditors), Bell *v.* Welch, 38 Ark. 139. But, in general, an attorney employed by the residuary legatee has no claim against the estate, although his services were beneficial to it. Scott *v.* Dailey, 89 Ind.

477. And fees incurred by an administrator in defense of the good name of his intestate have been held not to be for the benefit of the estate or chargeable to it. Woodard *v.* Woodard, 36 S. C. 118. As to directions of the New York surrogate in the matter of employing counsel, and as to allowance of fees paid, see Redf. Surr. Pr. 448.

Notes and bills. A negotiable promissory note made by an executor or administrator does not bind the estate, but the individual making it, although made in his official name. Iron Manufacturing Co. *v.* Gaskell, 2 Lea 742; Higgins *v.* Driggs, 21 Fla. 103; Lynch *v.* Kirby, 65 Ga. 279; Deas *v.* McRea, Id. 531; McFarlin *v.* Stimson, 56 Ga. 396; Dunne *v.* Deery, 40 Ia. 251; Orne *v.* Ritchie, 12 Phila. 231; Rittenhouse *v.* Ammerman, 64 Mo. 197; Christian *v.* Morris, 50 Ala. 585. As to the admission of evidence to show a contrary intent, see Stirling *v.* Winter, 80 Mo. 141. So, the personal representative becomes individually liable by the acceptance of a draft as executor or administrator, "to be paid when funds are received from the estate," Carter *v.* Thomas, 3 Ind. 213; or with a direction to "charge the amount against me and my mother's estate," Schmittler *v.* Simon, 101 N. Y. 554, revg. 25 Hun 76; or payable "as soon as accruing rents permit," and notwithstanding an order of court for payment out of the assets. Perry *v.* Cunningham, 40 Ark. 185. And the rule is the same as to an executor's bond, Patterson *v.* Craig, 1 Baxt. 291; or a covenant entered into by the executrix and her husband (he becoming solely liable thereby). Wilson *v.* Fridenberg, 22 Fla. 114. Even his indorsement of a note in renewal of the decedent's own indorsement will not render the estate liable. Bailey *v.* Spofford, 14 Hun 86. And if an executor makes his note in renewal of the decedent's note, and it is indorsed and paid by the indorser of the original note, such payment will not make him a creditor of the estate. White *v.* Thompson, 79 Me. 207. So, as to a surety on the administrator's note who is obliged to pay it. Voshage *v.* Voshage, 45 Mo. Ap. 172; Crowley *v.* McCrary, Id. 350. An administrator is personally liable on a note executed under a void order of the Probate Court, Wilburn *v.* McCalley, 68 Ala. 436; McCalley *v.* Wilburn, 77 Ala. 549; although he intended only to bind himself in his representative capacity. Thatcher *v.* Densmore, 5 Mass. 595; Vann *v.* Vann, 71 Ala. 154. His sureties on the administration bond will not be liable even for a note given by him for the monument. Curtis *v.* Bank, 39 O. St. 579.

But a debt of the estate will not be discharged by the note of the administrator. Laird *v.* Arnold, 25 Hun 4; and see Vol. II. p. 226, *ubi supra.* And the estate may be held on the administrator's promise for the performance of any duty imposed on him by law. Brown *v.* Evans, 15 Kan. 88.

2. *Promise to pay debts of decedent.* In general, the personal representative can create no new liability against the estate except for the expenses of administration. Brown *v.* Forst, 95 Ind. 248. Thus, the estate will not be rendered liable by the administrator's promise to pay an alleged debt of the decedent, Moody *v.* Shaw, 85 Ind. 88 (but see Piper *v.* Goodwin, 23 Me. 251); nor by the administrator's agreement that it should continue liable to a surety on his signing a note, given by the heirs and the surviving partner in renewal of a note by the decedent and his partner, on which the decedent had agreed to indemnify the same surety, Kingman *v.* Soule, 132 Mass. 285; nor by an executor's agreement to submit certain debts of the deceased with other matters (not concerning the estate) to adjustment in one formal suit, Barry *v.* Davis, 33

Mich. 515; or to pay interest on a judgment not drawing interest. Pinckney *v.* Singleton, 2 Hill (S. C.) 343.

Consideration—Statute of Frauds. There must be a new and valid consideration to render the executor personally liable on the new promise, and such a promise will charge him, and not the estate, although made for its benefit, Austin *v.* Munro, 47 N. Y. 360; Thompson *v.* Canterbury, 2 McCrary 332; Ross *v.* Harden, 44 N. Y. Super. Ct. 26; Luscomb *v.* Ballard, 5 Gray 403; Davis *v.* French, 20 Me. 21; Snead *v.* Coleman, 7 Gratt. 300; Robinson *v.* Lane, 22 Miss. 161; and in terms "as executor." Sims *v.* Stilwell, 4 Miss. 176; Walker *v.* Patterson, 36 Me. 273. So, if the other party has been induced by the contract to release a contract made by the testator, Fehlinger *v.* Wood, 134 Pa. St. 517; or to abandon his right of distress, Kershaw *v.* Whitaker, 1 Brev. 9; or to forego suit against the estate and release the other co-obligors, Mosley *v.* Taylor, 4 Dem. 542; Bank of Troy *v.* Topping, 9 Wend. 273; but see, as to forbearance by a tax collector to levy on the property of the mortgagor on the strength of the promise of the mortgagee's executor to pay the taxes, Dillaby *v.* Wilcox, 60 Conn. 71. So, if he gives his own note in renewal, and on surrender, of the note of the decedent, Cornthwaite *v.* First National Bank, 57 Ind. 268; irrespective of the fact that the note surrendered could not have been enforced at law, Wilton *v.* Eaton, 127 Mass. 174; or stipulates for the payment of a deficiency in the written assignment of a mortgage belonging to the estate. Westphal *v.* Carter, 49 N. Y. S. R. 874. Sufficient assets in hand make a sufficient consideration. Bank of Troy *v.* Topping, 9 Wend. 273; Faxon *v.* Dyson, 1 Cranch C. C. 441.

If, however, there is no new consideration, he will not be bound personally, even by his note, Ten Eyck *v.* Vanderpoel, 8 Johns. 120; Schoonmaker *v.* Roosa, 17 Johns. 304; although in a note the consideration need not be expressed, Ellis *v.* Merriman, 5 B. Mon. 296; nor by his agreement to adjust counter claims. Hollenback *v.* Clapp, 103 Pa. St. 60. But a promise to pay out of assets when received excludes in its terms the idea of personal liability. Allen *v.* Graffins, 8 Watts 397.

Under the Statute of Frauds the promise must likewise be in writing, and a parol promise by the executor or administrator to answer for the debt of the deceased will not charge him, Sidle *v.* Anderson, 45 Pa. St. 464; although the creditor relied on the promise and neglected to present his claim as required by law. Lewis *v.* Champion, 13 Stew. (N. J.) 59.

3. *Decedent's business.* In the absence of express contracts or testamentary directions on the part of the decedent it is left to the judgment of the executor or administrator to determine on his own responsibility what disposition shall be made of the business, and whether it shall be continued temporarily for the purpose of closing up without loss. Even in the case of a disagreement of co-administrators as to the advisability of a sale the court will not interfere by injunction. Brennan *v.* Lane, 4 Dem. 322. Where the business is carried on indefinitely, it is at the risk of the executor, and he must bear the loss. Croswell on Exrs. § 664; Woerner on Admn. § 328; Hooper *v.* Hooper, 29 W. Va. 276. Estate of Rose, 80 Cal. 166; Estate of Prescott, Tuck. 430; and account for the profits, Estate of Rose, *ubi supra;* as well as for the assets or interest used. Estate of Halloway, 13 Phila. 317; Estate of Wood, 1 Ashm. 314; Hooper *v.* Hooper, *ubi supra.* He cannot pay the debts of the new business out of the general assets of the estate, although the business

was continued under an order of the Probate Court. Altheimer *v.* Hunter, 56 Ark. 159. Thus, he will become individually liable for goods purchased for the business, Matter of Sharp, 5 Dem. 516; or for debts incurred in it. Mantz *v.* Brown, 11 La. An. 472. Such debts are not claims against the estate, Lucht *v.* Behrens, 28 O. St. 231; especially where the business has been improvidently carried on for a number of years. Woods *v.* Ridley, 27 Miss. 119. But where the testator's business (a school) is continued until the end of the school year for the purpose of closing it out without loss, the loss will fall upon the estate, and not upon the executor individually. Matter of Benedict, 13 Abb. N. C. 67; Gilman *v.* Gilman, 1 Dem. 547. So, where the business was continued with the approval of the family and next of kin for the benefit of the son, who was approaching his majority and engaged in the business. Poole *v.* Munday, 103 Mass. 174. On the other hand, an executor carrying on his testator's business must keep full and correct books, and account for all profits made. Estate of De Haven, 15 Phila. 595. Where the continuation is reasonably necessary for the purpose of winding up, he will be credited with the necessary expenses and charged with the profits. Merritt *v.* Merritt, 62 Mo. 150. But he cannot be charged with the value of the good will and the profits of the business. Matter of Randell, 2 Connoly 29. Under the Georgia statute (Code, § 2545) the administrator may continue the business of the decedent for one year. But even in such case he is liable individually to business creditors, and must look to the estate for allowance in his accounts. Stephens *v.* James, 77 Ga. 189.

Partnership business—Rights of surviving partner. In general, the effects and business of a partnership go to the surviving partner, who has both the authority and responsibility for closing it up. He cannot, however, use partnership assets for his individual benefit, Case *v.* Abeel, 1 Paige 393; and if he continues business with the partnership stock, he must account for prices realized or fair market value. Ames *v.* Downing, 1 Bradf. 321. And if he carries on the business beyond the point necessary for winding it up, he will be liable to account to the estate of the deceased partner for profits, and in case of loss for simple interest on the value of decedent's share of the partnership assets. Brown's Appeal, 89 Pa. St. 189. The administrator of the deceased partner may bring an action against the survivor for the balance due the estate and admitted by the surviving partner on the partnership settlement. Holman *v.* Nance, 84 Mo. 674. The surviving partner may sell the partnership assets, even to the executor of the deceased partner, Moses *v.* Moses, 50 Ga. 9; and, conversely, may purchase the interest of the deceased partner from his personal representative, although he cannot buy it at his own sale. Valentine *v.* Nysor, 123 Ind. 47. And even where the executors are authorized by the will to sell to the surviving partner, and he is one of the executors, the sale is voidable. Denholm *v.* McKay, 148 Mass. 434. The purchase by a surviving partner of the deceased partner's interest will carry the profits of the business from the testator's death. Kimball *v.* Lincoln, 99 Ill. 578. In Ohio, the statute provides for purchase by the surviving partner, and an interest in the good will is included in the decedent's estate, and does not pass exclusively to the surviving partner except by purchase from the estate. Rammelsberg *v.* Mitchell, 29 O. St. 22.

In Missouri, the surviving partner may dispose of the partnership realty for partnership debts under an order of

the Probate Court. Easton *v.* Courtwright, 84 Mo. 27; Wagner's Statutes p. 80, § 63. And where the executor of the deceased partner under the authority of the will joins with the surviving partner in a deed of the partnership realty, the proceeds will go to the surviving partner to be accounted for in the partnership settlement, and need not be accounted for by the executor, unless it appears that the land was not in fact partnership property. Williams' Appeal, 122 Pa. St. 472.

In general, the surviving partner is not entitled to compensation for winding up the business, Brown's Appeal, 89 Pa. St. 139; Loomis *v.* Armstrong, 49 Mich. 521; Gregory *v.* Menefee, 88 Mo. 413; nor chargeable with interest on the assets while winding it up. Gregory *v.* Menefee, *ubi supra.* But compensation may be allowed the surviving partner in special cases where the business has been profitably carried on, Robinson *v.* Simmons, 146 Mass. 175; or to the executor of the surviving partner. Dayton *v.* Bartlett, 38 O. St. 357.

Continuing partnership business. In general, the executor of the deceased partner cannot as such continue the partnership business with the survivors in the absence of express contract or testamentary directions. He cannot use the general assets of the estate in such business, Tompkins *v.* Meeker, 26 Cal. 50; and he will be personally liable for debts incurred, if he continues the business with the surviving partner, Alsop *v.* Mather, 8 Conn. 584; Stedman *v.* Feidler, 20 N. Y. 487; or if he permits the surviving partner to carry it on for their joint benefit. Thompson *v.* Brown, 4 Johns. Ch. 619. But he will not render the estate liable to such creditors, Stedman *v.* Feidler, *ubi supra.* And he will not be responsible to creditors of the decedent's estate for loss of the partnership assets in such winding up by the survivor, but only for new assets put in by him, Thompson *v.* Brown, *ubi supra;* especially where the estate is insolvent. Stern's Appeal, 95 Pa. St. 504. See too, New *v.* Nicol, 73 N. Y. 131. And he will not be liable for debts contracted by the surviving partner in continuing the business without any consent or agreement on his part and against his protest. Avery *v.* Myers, 60 Miss. 367. If he allows the testator's interest to remain as the most advisable course toward a settlement, he is not liable for loss which could not have been avoided by any other course. Browne *v.* Bedford, 4 Dem. 304. But if he acts against the express direction of the will to withdraw the decedent's interest, he will be liable. Hooley *v.* Giere, 9 Abb. N. C. 8. On the other hand, the surviving partner may recover from the administrator of the deceased such firm assets as have been received or collected by him. Calvert *v.* Marlow, 18 Ala. 67. But distributees may file a bill in equity for an account against the administrator and the surviving partner, where, after settlement of the partnership and allowance of the claim of the survivor against the deceased partner, the status has been changed by subsequent collection of partnership moneys. Chapman *v.* Chapman, 13 R. I. 680. As to credit on the partnership settlement of payments made by the surviving partner to the family or heirs of the deceased partner, see Cohen *v.* Hymes, 18 N. Y. Supp. 571; Schermerhorn *v.* Brewer, 17 Id. 701. And the heirs of the deceased partner cannot object to payments made for their benefit by the administrator on account of taxes on the partnership realty pending the settlement of the partnership business by the surviving partner. Loomis *v.* Armstrong, 63 Mich. 355.

Administration by surviving partner.

Where the surviving partner is administrator of the deceased, he must account in the Probate Court for the settlement of the partnership affairs. Leland *v.* Newton, 102 Mass. 350. He should settle up the partnership estate first, Palicio *v.* Bigne, 15 Or. 142; and may forfeit his commissions by maladministration of the partnership. Estate of Unruhe, 13 Phila. 337. And the survivor's executor may be required by the administrator *de bonis non* of the other partner to produce the partnership books for examination. Perrin *v.* Calhoun County Judge, 49 Mich. 342.

Directions of will. Where partnership business is continued under direction of the will, subsequent creditors of the partnership will not become creditors of the decedent's estate. Matter of Stern, 2 Connoly 204. And the general assets of the estate will be first liable to general creditors. Morrow *v.* Morrow, 2 Tenn. Ch. 549. And the executors or trustees designated by the will for the purpose of continuing the partnership business will not thereby become partners, although express authority is given them to incur liabilities, &c., as fully as the testator could have done. Noyes *v.* Turnbull, 54 Hun 26. So, by continuing the testator's partnership business by direction of the will, the executor does not render himself liable for former partnership debts contracted in testator's lifetime, and the surviving partner cannot give partnership renewals for such debts. Mattison *v.* Farnham, 44 Minn. 95.

The executor may, however, under the express directions of the will become a partner, and even allow the surviving partner a definite sum in lieu of the services of the deceased partner (the amount being, by the will, left discretionary with the executor), although such surviving partner is a coexecutor. Matter of Bach, 2 Connoly 490. And there may be a testamentary provision for the compensation of the executor over and above his interest in the partnership. Allen's Appeal, 125 Pa. St. 544.

To subject the estate of a decedent to debts of the partnership contracted after his death there must be clear and express testamentary directions. Bacon *v.* Pomeroy, 104 Mass. 585. It is not enough to leave the property to the executor "to be managed and conveyed at his discretion" for the benefit of the family. Citizens' Mutual Insurance Co. *v.* Ligon, 59 Miss. 305. On the other hand, under a direction for the continuance of the partnership for two years, the executors are at liberty to dissolve it at the end of that period, notwithstanding contracts made by the other partner for employment of manager, &c., beyond that time. Berry *v.* Folkes, 60 Miss. 576.

If the direction is to continue the testator's capital in the business, it will not authorize liabilities or render the estate liable beyond the amount invested at testator's death. Smith *v.* Ayres, 101 U. S. 320; Jones *v.* Walker, 103 U. S. 444; Burwell *v.* Madeville, 2 How. 560; and will not include undivided profits in the possession of the firm, Dean *v.* Dean, 54 Miss. 23; or profits made after testator's death and distributed from time to time to his family under the direction of the will. Jones *v.* Walker, *ubi supra.* Such direction does not authorize the investment of further capital. Brasfield *v.* French, 59 Miss. 632. And creditors seeking to charge particular property must show that it was part of the property used in the business. Wilson *v.* Fridenberg, 21 Fla. 386.

On failure or abandonment of the business the executor must account for the interest of the testator. Estate of Snyder, 48 N. Y. S. R. 643. And if the privilege is bequeathed him of carrying on the business for a designated

time without interest for the use of the capital, he will be liable for its safe return as a loan at the end of the time. Bennett *v.* Hoffman, 58 Md. 78.

Where executors continue the business under the direction of the will in good faith and believing it to be for the interest of the estate, they will not be liable to creditors of the estate for losses resulting, Dwyer *v.* Katteyer, 68 Tex. 554; but such losses must be borne by the estate, Cline's Appeal, 106 Pa. St. 617; and charged to income (bequeathed for life) rather than to the remainder, Matter of Jones, 108 N. Y. 625, affg. 37 Hun 430; so too, Donnat *v.* Jones, 2 Dem. 602; Hepburn *v.* Hepburn, 2 Bradf. 74; as in the case of business continued without express testamentary direction. Ver Duin *v.* Ver Duin, 15 Stew (N. J.) 325. The debts of the new business cannot be enforced, however, against the estate, even by a bill in equity to reimburse the surviving partner who paid them, unless incurred and presented within the statutory limit of time, although within the term prescribed by the will for continuing the business. Pitkin *v.* Pitkin, 7 Conn. 307. And losses incurred by negligence in keeping up testator's business under direction of the will must be borne by the executors. Will of Rumsey, 18 N. Y. Supp. 402.

The contracts of the executrix in carrying on testator's business pursuant to the will bind her individually, and not the estate, Delaware &c. Railroad *v.* Gilbert, 44 Hun 201; except by clear directions of the will itself. Bacon *v.* Pomeroy, 104 Mass. 577. In general, the executor is individually liable, with the right to be reimbursed from the estate, Foxworth *v.* White, 72 Ala. 224; but only so far as it is employed in the business, not including adjoining real property, though it had been improved out of the profits derived from the business, Laible *v.* Ferry, 5 Stew. (N. J.) 791, revg. 4 Id. 566; S. C. 12 C. E. Gr. 146.

If the executor is insolvent, however, the debts contracted in the business under the direction of the will may be enforced against the general estate, Clapp *v.* Clapp, 44 Hun 451; by bill in equity, Willis *v.* Sharp, 113 N. Y. 586, affg. 43 Hun 434; after settlement of the estate in due course, and not by judgment and receiver in the first instance. Willis *v.* Sharp, 115 N. Y. 396. But creditors must exhaust their remedy against the executor, unless there is special reason (such as the insolvency of the executor for equitable interposition). Laible *v.* Ferry, *ubi supra.* And a court of equity will not, in general, control a discretion expressly given to a majority of the executors in the interest of a minority. Will of Rumsey, 18 N. Y. Supp. 402.

Business continued under partnership articles. The articles of copartnership may provide for its continuance after the death of a partner for a specified time. Matter of Laney, 50 Hun 15; S. C. Laney *v.* Laney, 6 Dem. 241. But not at the option of the survivor. Hart *v.* Anger, 38 La. An. 341. The general estate is not liable for subsequent debts incurred in the partnership business, under a provision that the survivor shall continue the business for a fixed period and that the estate of the deceased partner shall share profits and losses, Stewart *v.* Robinson, 21 Abb. N. C. 63; S. C. 115 N. Y. 328; although it may be made liable even for new debts incurred by an express contract to that effect. Loughlin *v.* Lorenz, 48 Pa. St. 275. An agreement for the continuance of the partnership will not make the executor a partner of the survivor, when he merely leaves the decedent's interest in the business and takes no active part in its management. Stewart *v.* Robinson, 115 N. Y. 328. And the executor will

not in such case become individually liable on contracts of the surviving partner in the continuation of the business. Wild *v.* Davenport, 19 Vroom 129.

4. *Maintenance of family.* At common law expenditures and contracts made for the benefit of the family of the decedent after his death do not bind his estate, *e. g.* for medical attendance on the family, Johnston *v.* Morrow, 1 Stew. (N. J.) 327; although the administrator may become individually liable on such a promise (for board of children of the decedent). Higgins *v.* Hallock, 60 Hun 125. In some states, however, the estate becomes liable, and such expenditures are allowed out of the estate; *e. g.*, for education of the children, Perry *v.* Field, 40 Ark. 175 (on a note made by the executor as "guardian"); or care of a lunatic member of the family, Kost's Appeal, 107 Pa. St. 143; or nursing and necessaries for sick servants. Edelen *v.* Edelen, 11 Md. 415. For statutory allowances to the widow and children, see Vol. II. p. 865, *ubi supra.*

5. *Contracts as to land.* At common law the title to the land passes to the heirs, and an administrator or executor binds himself individually, and not the estate, by his contracts in regard to it. This is true of his covenants in a deed in execution of a probate sale. Hale *v.* Marquette, 69 Ia. 376; Prouty *v.* Mather, 49 Vt. 415; Sumner *v.* Williams, 8 Mass. 162; Colbert *v.* Moore, 64 Ga. 502. So too, he cannot render the estate liable for his failure to complete a contract made by himself under a power of sale, Whitlock *v.* Washburn, 17 N. Y. Supp. 60; nor will his own estate be liable on his agreement for a lease made under a sufficient power in the will, but left unexecuted at the time of his death. Houck *v.* Stauffer, 31 Pa. St. 235. An executor is liable as such upon covenants in a lease executed by his testator as lessee, whether he enters into possession of the demised premises or not. Howard *v.* Heinerschit, 16 Hun 177. But if he enters into possession, he will become individually liable for the subsequent rent, Id.; Inches *v.* Dickinson, 2 Allen 72; at least to the extent of profits received by him. Becker *v.* Walworth, 45 O. St. 169.

Where there is no authority given either by contracts of the deceased or testamentary directions or by statute, the personal representative has no authority to incur debts or make expenditures for the care of the real property or the crops growing on it. As to the right to the crops, see Vol. I. p. 843, n., *ubi supra;* as to possession and control of the land, see Vol. III. p. 181, *ubi supra.* Thus, he will be individually liable, and the estate will not be liable on his contracts for services in managing the land, Vann *v.* Vann, 71 Ala. 154; and supplies. Succession of Sparrow, 39 La. An. 696; Florsheim *v.* Holt, 32 La. An. 133.

He may, however, bind the estate in carrying out the testator's own contracts for working the land for the balance of the year, Lawton *v.* Fish, 51 Ga. 647; or by his own contracts made under the directions of the will, Palmer *v.* Moore, 82 Ga. 177; Hinson *v.* Williamson, 74 Ala. 180; Tyson *v.* Walston, 83 N. C. 90; or incurred by consent of all the parties in interest. Estate of Mansfield, 80 Ia. 681.

In some states there is statutory provision for carrying on the plantation of the deceased, and the estate will be liable for the expenses incurred by the personal representative in so doing, Jordan *v.* Brown, 72 Ga. 495; Reinstein *v.* Smith, 65 Tex. 247.

SECTION II.

Of the Liability of an Executor or Administrator in respect of his own tortious or negligent Acts: and herewith of Devastavit; and of Executors' Accounts and Allowances.

It remains to investigate what shall amount to such a violation or neglect of duty by an executor or administrator, as shall make him personally responsible.†

This species of misconduct is called in law a *devastavit:* that is, a wasting of the assets; and is defined to be, a mismanagement of the estate and effects of the deceased, in squandering and misapplying the assets contrary to the duty *imposed on them, for which executors or administrators shall answer out of their own pockets, as far as they had, or might have had, assets of the deceased (*g*).

Devastavit.

An executor is personally liable in equity for all breaches of the ordinary trusts which, in courts of equity, are considered to arise from his office (*h*). And it may here be observed, that where personal property is bequeathed to executors, as trustees, the circumstance of taking probate of the will (*i*) is, in itself, an acceptance of the particular trusts: Therefore, where the will contains express direc-

Executor liable for breach of trusts arising from office.

Probate by executors is an acceptance of trusts in will.

† See note 1 on p. *1726 *ubi infra.*

(*g*) Bac. Abr. Exors. (I.) 1.

(*h*) Re Marsden, 26 C. D. 783, 789.

(*i*) And where probate is granted to one of several executors, the right of the others being reserved, it enures to the benefit of all and a slight act of intermeddling by the executor, who has not joined in proving the will, will amount to the acceptance of the office of executor. Cummins *v.* Cummins, 3 J. & L. 64. 8 Ir. Eq. Rep. 723. And where one appointed executor intermeddled with the estate of the testator and afterward renounced, it was held that he was liable to be sued in equity in the character of executor by the legatees under the will, one of whom was also executrix, and had proved the will. Rogers *v.* Frank, 1 Y. & J. 409. So, too, where two out of three executors proved the will, and the third, who did not prove, administered part of the assets, and, as purchaser, paid the purchase-money of the stock in trade to one of the other two executors who misapplied the money, it was held that he was liable as executor, being by his conduct completely executor. Kilbee *v.* Sneyd, 2 Moll. 186.

tions what the executors are to do, an executor, who proves the will, must do all which he is directed to do as executor, and he cannot say, that though executor, he is not clothed with any of those trusts (*j*).

The general rule adopted, with respect to the liability of executors and administrators on this head, is founded upon two principles: 1st, That in order not to deter persons from *undertaking these offices, the court is extremely liberal in making every possible allowance, and cautious not to hold executors or administrators liable upon slight ground: 2nd, That care must be taken to guard against an abuse of their trust (*k*).

Executors and administrators may be guilty of a *devastavit* not only by a direct abuse of them, as by spending or consuming, or converting to their own use (*l*), the effects of the deceased, but also by such acts of negligence and wrong administration, as will disappoint the claimants on the assets (*m*).

Devastavit by direct acts of abuse:

With respect to incurring the charge by plain and palpable acts of abuse, an example of this sort of *devastavit* may be afforded by recurring to a subject already considered: *viz.*, the application of the assets to the satisfaction of the executor's own debt to a third party (*n*). So where the executor collusively sells the testator's goods at an under-value, when he might have obtained a higher price for them, it is a *devastavit*, and he shall answer the real value (*o*).

by mal-administration.

With regard to a *devastavit* arising from the mal-administration of the executor or administrator,† the charge will be incurred by misapplying the assets in undue expenses

(*j*) Mucklow *v.* Fuller, Jacob. 198. Booth *v.* Booth, 1 Beav. 125. Stiles *v.* Guy, 4 Y. & Coll. 571, 575. Williams *v.* Nixon, 2 Beav. 472. But where the same persons are appointed trustees and executors of a will, a revocation by the testator of their appointment as executors is not necessarily a revocation of their appointment as trustees: Graham *v.* Graham, 16 Beav. 550. Cartwright *v.* Shepheard, 17 Beav. 301. Worley *v.* Worley, 18 Beav. 58.

(*k*) Powell *v.* Evans, 5 Ves. 843. Raphael *v.* Boehm, 13 Ves. 410. Tebbs *v.* Carpenter, 1 Madd. 298.

[*1692]

(*l*) A disposing of the goods of the testator to the executor's own use is no *devastavit*, if he pays the testator's debts to the value, with his own money, in such order as the law appoints: Merchant *v.* Driver, 1 Saund. 307. Com. Dig. Admon. (I. 2). *Ante*, p. *567.

(*m*) Bac. Abr. Exors. (L.) 1.

(*n*) See *ante*, p. *805.

(*o*) Went. Off. Ex. 302, 14th edit. Bac. Abr. Exors. (L.) 1. Rice *v.* Gordon, 11 Beav. 265.

† See note 1 on p. *1726 *ubi infra.*

for the funeral (*p*); in the payment of debts out of their legal order, to the prejudice of such as are superior (*q*); or by an assent *to, or payment of a legacy, when there is not a fund sufficient for creditors (*r*).

Devastavit in paying debts of inferior degree before debts of superior degree.

It must, however, be observed, that it is not a *devastavit* in an executor or administrator to pay a debt of an inferior degree, before one of higher, *of which he had no notice* (*s*). And it has been doubted whether it is any *devastavit* to pay over the whole of the assets to the legatees or parties entitled in distribution, so as to leave nothing to satisfy a claimant for a valuable consideration, if the executor had no notice of the existence of the demand, and a reasonable time elapsed, after the death of the testator, before the payment by the executor to the legatees, or next of kin (*t*). But the modern authorities appear to establish that the mere circumstance of want of notice of a debt or claim against the estate of the deceased will not excuse the executor from the payment or satisfaction of it, if the assets were originally sufficient for that purpose, notwithstanding that, in ignorance of the existence of the debt or claim, he may have handed over the assets *bona fide* to legatees or parties entitled in distribution (*u*).

Notice by executor or administrator.

As to distribution of assets of testator or intestate after notice given by executor or administrator.

An executor or administrator can now protect himself by taking the proper steps, for by stat. 22 & 23 Vict. c. 35, it is enacted: sect 29, "Where an executor or administrator shall have given such or the like notices (*x*), as in the opinion of the Court in which such executor or administrator is sought to be charged, would have been given by the Court of Chancery in an administration suit for creditors and others to send in to the executor or administrator their claims against the estate of the testator or intestate, such executor or administrator shall, at the expiration of the time named in the said notices, or the last of the said notices, for

(*p*) *Ante*, p. *836 *et seq.*

(*q*) *Ante*, p. *850 *et seq.* But if the executor pays an inferior debt with his own money, though it be to the value of the testator's goods in his hands, it should seem that it will not be a *devastavit:* for the property of the assets will not be changed thereby, but they remain, as against a creditor of a debt of a superior degree in the same plight as they were before. Com. Dig. Admon. (I. 2). Wheatley *v.* Lane, 1 Saund. 218, by Pemberton, *arguendo.*

(*r*) *Ante*, p. *1202.

(*s*) See *ante*, p. *879.

(*t*) See *ante*, p. *1205 *et seq.*

(*u*) *Ante*, p. *1206.

(*x*) See Ord. LV., rr. 44–61, R. S. C. 1883, for the notices which would have to be given in an administration suit.

sending in such claims, be at liberty to distribute the assets of the testator or intestate, or any part thereof, amongst the parties *entitled thereto, having regard to the claims of which such executor or administrator has then notice, and shall not be liable for the assets, or any part thereof, so distributed to any person of whose claim such executor or administrator shall not have had notice at the time of the distribution of the said assets, or a part thereof, as the case may be; but nothing in the present Act contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, into the hands of the person or persons who may have received the same respectively."

If the executor surrenders, or otherwise fails to preserve the residue of a term of years, where the land is of greater yearly value than the rent, it is a *devastavit* (*y*). On the other hand, if the rent be greater than the yearly value of the land, and the testator was the assignee of the term, the executor may be guilty of a *devastavit* in neglecting to exonerate the estate of the testator from its liabilities in respect of the lease by assigning it to some other person (*z*). If a term be assigned by an executor in trust to attend the inheritance, he is liable to the creditors for a *devastavit;* for the term has by this means become not assets at law (*a*).

Distinction between executors and administrators as to releasing or compounding debts.

The law formerly pressed very hardly on executors and administrators who, in the exercise of an honest discretion, released or compounded debts due to the testator or intestate. The hardship has been much mitigated by legislation, first by Lord Cranworth's Act, 23 & 24 Vict. c. 145, s. 30, and then by the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), which repealed the above-mentioned section of Lord Cranworth's Act, and by sect. 37 afforded a still larger relief to executors.

23 & 24 Vict. c. 145, s. 30.

The effect of sect. 30 of Lord Cranworth's Act was to make it lawful for executors to compound, compromise, or refer to arbitration all claims relating to the testator's estate without *being responsible for any loss occasioned thereby. This provision, however, only extended to persons acting under a will or codicil executed after the 28th August, 1860, or under a will or codicil confirmed or revived by a codicil executed after that date.

(*y*) Wentw. Off. Ex. c. 13, p. 312, 14th edit. Thompson *v.* Thompson, 9 Price, 476.

(*z*) Rowley *v.* Adams, 4 M. & Cr. 534. *Ante*, p.*1631, note (*f*).

(*a*) Charlton *v.* Low, 3 P. Wms. 330.

The above section of Lord Cranworth's Act is now repealed by the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), by the 37th section of which it is enacted that—

Executor may now compound or release debts.

44 & 45 Vict. c. 41.

(1) An executor may pay or allow any debt or claim on any evidence that he thinks sufficient.

(2) An executor, or two or more trustees acting together, or a sole acting trustee, where by the instrument, if any, creating the trust, a sole trustee is authorized to execute the trusts and powers thereof, may, if and as he or they think fit, accept any composition or any security, real or personal, for any debt or for any property real or personal claimed, and may allow any time for payment of any debt, and may compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the testator's estate or to the trust, and for any of those purposes may enter into, give, execute, and do such agreements, instruments of composition, or arrangement, releases, and other things as to him or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them in good faith.

It should be observed that by sect. 37, sub-s. 4, of this act, the above section applies to executorships and trusts constituted or created either before or after the commencement of the act.

This legislation, so far as executors are concerned, renders the old cases valueless, but inasmuch as neither act would seem to extend to administrators (*b*), it has been thought better to retain the text of the former editions of this work unaltered.

Cases on the old law as to the liability of executors releasing or compounding debts, &c., before Lord Cranworth's Act, 1860, now inapplicable to executors but still applicable to administrators.

*If the executor releases a debt due to the testator, or cancels or delivers to the obligor a bond of which the testator was the obligee, this shall charge him to the amount of the debt, whether in point of fact he received it or not (*c*).† So if he releases a cause of action founded on a tort accruing either in the lifetime of the testator, or in his own time in right of the testator, this will be a *devastavit* for the residue: Wentw. Off. Ex. 303, 14th edit. Com. Dig. Admon. (I. 2). Nor a parol agreement that he will not sue for more: *Ibid.* Nor a delivery of the bond into another hand, that it may not be sued: *Ibid.*: But see *post*, p. *1703, note (*q*).

(*b*) See Re Clay and Tetley, 16 C. D. 3.

(*c*) Wentw. Off. Ex. 303, 14th edit. Cocke *v.* Jenner, Hob. 66. Veghelman *v.* Kighley, And. 138. S. C. *nomine* Brightman *v.* Keighley, Cro. Eliz. 43. S. C. 4 Leon. 102. S. C. Godb. 29. But a receipt for so much due on the bond as the executor receives, is not a *devastavit*

† See note 1 on p. *1726 *ubi infra.*

vit (*d*). So if he agrees with an executor *de son tort* and accepts his covenant for payment, he will be liable for so much, though nothing be paid (*e*). So if the executor takes an obligation in his own name, for a debt due by simple contract to the testator, this shall charge him as much as if he had received the money; for the new security had extinguished the old right, and is a *quasi* payment to him (*f*). So, apart from the Married Women's Property Act, if the husband of a *feme covert* executrix indulge the debtor with further time, in consideration of an express promise to pay the husband, who afterward recovers on such promise, this is a *devastavit:* For the money recovered will not be assets of the testator's estate, and if the husband dies before execution sued, the executor or administrator of the husband, and not the wife, shall have execution (*g*). So if an executor, in his representative character, commences an action in which he has a right to recover, and afterward covenants with the *defendant to receive a specific sum at a future day as a compensation, he will be answerable for the money as assets immediately (*h*).

Again, if the executor submits a debt due to the testator to arbitration, and the arbitrators award him less than his due; this, being his own voluntary act, shall bind him, and he shall answer for the full value as assets (*i*).

But though, generally speaking, an executor, compounding (*k*), or releasing, a debt, must answer for the same, yet if it appears to have

(*d*) Wentw. Off. Ex. 304, 4th edit. Com. Dig. Admon. (I. 1). Bac. Abr. Exors. (L.) 1.

(*e*) Com. Dig. Admon. (I. 1).

(*f*) Goring *v.* Goring, Yelv. 10 Bac. Abr. Exors. (L.) 1, *ante*, p. *1537. But where the executor delivered up a bond due to his testator, and took a new bond, with surety to himself for the debt, it was held, that this, though a conversion in law, was none in equity: Armitage *v.* Metcalfe, 1 Chanc. Cas. 74.

(*g*) Yard *v.* Ellard, 1 Salk. 117.

(*h*) Norden *v.* Levit, 2 Lev. 189. S. C. T. Jones, 88. 1 Freem. 442. S. C. cited and said to have been affirmed on error, in Dom. Proc., Barker *v.* Talcot, 1 Vern. 474. Jenkins *v.* Plombe, 6 Mod. 94. It seems to have been once holden, that if an executor to an obligee in a penal bond, after the bond is forfeited, release the penalty on receipt of the principal and interest, this is a *devastavit:* Went. Off. Ex. 303, 14th edit. But the contrary was held by three judges, in Kniveton *v.* Latham, Cro. Car. 490: And since the statute 4 Ann. c. 16, s. 13, it is obviously no *devastavit*.

(*i*) Wentw. Off. Ex. 304, 14th edit. Anon. 3 Leon. 53. Com. Dig. Admon. (I. 1). Bac. Abr. Exors. (L.) 1. Yard *v.* Ellard, 1 Lord Raym. 369, by Holt, Ch. J.

(*k*) See Wiles *v.* Gresham, 5 De Gex, M. & G. 770.

[*1697]

been for the benefit of the trust estate, it is an excuse; Therefore, in a case where there were arrears of rent on a lease, and, on the tenant's becoming insolvent, the executor released the arrears, and gave him a sum of money to quit possession, Lord Talbot held, that as the executor appeared to have acted for the benefit of the estate, he should be allowed both sums (*l*). So in Pennington *v.* Healey (*m*), an administrator sued a debtor to his intestate, and recovered a verdict against him: and the debtor, being in gaol, subsequently petitioned to be discharged under the Insolvent Act: The debtor offered terms, whereby he was to be liberated on the payment of 150*l.*, a sum less than the costs incurred in the action: The administrator agreed to *the terms, and liberated the debtor: And the Court of Exchequer held, in an action brought against him by a creditor of the intestate, that he was not chargeable with any part of the debt as assets.

Devastavit by unnecessary payments:

An executor will be guilty of a *devastavit*, if he applies the assets in payment of a claim which he is not bound to satisfy (*n*)†: as if he makes disbursements in the schooling, feeding, or clothing of the children of the deceased, subsequently to his decease (*o*). But executors must be allowed a reasonable time for breaking up a testator's domestic establishment and discharging his servants (*p*). Again, where the testator had been attended for many years by a physician without any fees, and the

(*l*) Blue *v.* Marshall, 3 P. Wms. 381. In Legh *v.* Holloway, 8 Ves. 213, an executor, having, under a misconception of a will, at a trial of an issue, entered into a compromise with the creditor, expressly subject to the approbation of the court, was permitted to try the issue, paying the costs of the former proceedings.

(*m*) 1 Crompt. & M. 402. S. C. 3 Tyrwh. 319.

(*n*) Com. Dig. Admon. (I. 1). Manning *v.* Purcell, 7 De G. M. & G. 55. Vez *v.* Emery, 5 Ves. 141. In this last case, Lord Alvanley said, that if the executor had taken advice as to the propriety of making the payment, and had been advised by any gentleman of the law in this country, that he was bound to do so, he (the learned judge) would not havo held him liable. However, the general rule is, that, if, under the best advice he can procure, an executor acts wrong, it is his misfortune; but public policy requires that he should be the person to suffer: if he has been misadvised, the court must act, not upon the improper advice under which he may have acted, but upon the acts he has done: Doyle *v.* Blake, 2 Sch. & Lef. 243.

† See note 1 on p. *1726 *ubi infra.*

(*o*) Giles *v.* Dyson, 1 Stark. N. P. C. 32.

(*p*) Field *v.* Peckett, 29 Beav. 576, where two months was held not to have been an unreasonable time having regard to the circumstances.

[*1698]

executors had paid him 100*l.*, and he had stated in an affidavit, that the testator had promised to pay him for his services or leave him an equivalent, it was held, that as the physician could not have claimed himself as for a legal debt, the executors, who had taken on themselves to pay him, stood in the same situation as he did; and the payment thereof could not be allowed (*q*). So if an executor *pays a bond *ex turpi causa* or, formerly, a bond founded on a usurious contract, such payment will amount to a *devastavit*, as well against legatees as creditors (*r*). So if the testator was bound in a *joint* obligation, and he dies before the co-obligor, the executor is not liable on the instrument, and therefore if he pays the sum due upon it, he will be guilty of a *devastavit* (*s*): However, in equity, the executor is in some instances chargeable *pari passu* with the survivor; and in such cases he is justified in applying the assets accordingly (*t*). But an executor may pay a debt proved to be justly due by his testator, although barred by the Statute of Limitations (*u*). Again, it has been held that he is not bound to plead the statute to an action commenced against him by a creditor of the testator (*x*): Thus if the surplus of the personal estate, after payment of the debts and legacies, be bequeathed to a residuary legatee, and several creditors, although barred by the Statute of Limitations, commence actions against the executor, equity will not, on his refusal to plead the statute, compel him to plead it in favor of the residuary lega-

(*q*) Shallcross *v.* Wright, 12 Beav. 558. But in the same case, a payment was allowed which the executors had made in respect of the loss of the furniture of the house of a friend where the testator had died of malignant fever, and which had been destroyed, under medical advice to prevent infection. And see *ante*, pp. *1656, *1657, as to the liability of an executor to pay for work done or services rendered *under the expectation* of a legacy.

(*r*) Winchcombe *v.* Bishop of Winchester, Hobart, 167. Robinson *v.* Gee, 1 Ves. Sen. 254. Com. Dig. Admon. (I.1), *ante*, p. *871.

(*s*) *Ante*, p. *1614.

(*t*) *Ante*, p. *1621.

(*u*) Norton *v.* Frecker, 1 Atk. 526, by Lord Hardwicke. Stahlschmidt *v.* Lett, 1 Sm. & G. 415. The reason for this is that the Statute of Limitations does not make the contract void but only bars the remedy. Whereas an executor or administrator would commit a *devastavit* who paid a debt to a creditor who is prevented from enforcing it by the Statute of Frauds, or who retains such a debt due to himself. Re Rownson, 29 C. D. 358.

(*x*) Williamson *v.* Naylor, 3 Younge and Coll. 211, note (*a*), by Lord Lyndhurst. But see *contra*, by Bayley, J., in McCulloch *v.* Dawes, 9 Dowl. & Ryl. 43. This dictum of the latter judge was disapproved by Wood, V.-C. (in Hill *v.* Walker, 4 Kay & J. 166). Lowis *v.* Rumney, L. R. 4 Eq. 451.

tee (*y*). So in the administration of assets under a creditor's bill, it was held, that executors were not bound to plead the statute; and if they did not, the creditor filing the bill would have a decree *on behalf of himself and all other creditors, and would be paid (*z*). And accordingly, on a creditor's administration summons, if the executor does not set up the statute, the residuary legatees cannot set it up against the plaintiff, whatever may be their right as to other creditors (*a*). But in Shewen *v.* Vandenhorst (*b*), under the common decree in an administration suit, where the bill had been filed, and the decree obtained, by the residuary legatee, a creditor applied to prove a debt which was barred by lapse of time; and the executor refusing to interfere, the plaintiff insisted upon setting up the objection of the statute: Sir John Leach, M.R., held, that it was competent for the plaintiff, or any other person interested in the fund, to take advantage of the statute before the master, notwithstanding the refusal of the executor: And this decision was confirmed by Lord Brougham on appeal (*c*). And even on a creditor's adminis*tration summons, the *cestuis que trustent* of devised estates may set up the statute

(*y*) Castleton *v.* Fanshaw, Prec. Chanc. 100. S. C. 1 Eq. Cas. Abr. 305. 2 Eq. Cas. Abr. 254, pl. 1, 259, pl. 1.

(*z*) *Ex parte* Dewdney, 15 Ves. 498.

(*a*) Briggs *v.* Wilson, 5 De Gex, M. & G. 12. See also Fuller *v.* Redman, 26 Beav. 614. So, after decree in an administration suit, the court is not bound, on behalf of an absent party beneficially interested in the estate, to disallow claims against the estate barred by the statute if the personal representative and such of the persons beneficially interested as are parties to the suit or have come in under the decree do not set up the statute: Alston *v.* Trollope, L. R. 2 Eq. 205.

(*b*) 1 Russ. & M. 347. 2 Russ. & M. 75.

(*c*) See also Moodie *v.* Bannister, 4 Drewr. 432. Fuller *v.* Redman, 26 Beav. 614. After judgment or order for administration an executor cannot exercise any discretion at all or do any act to vary the rights of the parties, and he cannot therefore give an acknowledgment to take a debt out of the Statute of Limitations: Phillips *v.* Beal, 32 Beav. 26. Nothing short of an order for administration will prevent a creditor of the estate from suing the executor, or the executor from paying a debt due from the estate. Re Barrett, 43 C. D. 70. But an originating summons under R. S. C., Ord. LV. r. 3, is only a less expensive way of effecting the same thing as an administration action, and therefore the residuary legatee can compel the executors to plead the Statute of Limitations, where under the old practice the question could only have been determined after decree for administration, which would have abolished the executor's discretion. Re Wenham, [1892] 3 Ch. 59. If before judgment or order it is desired to prevent waste, the court will grant interim relief by appointing a receiver, but it will not interfere to prevent the executor or administrator

[*1700] [*1701]

against him, though the executor should decline to do so; for they would have been necessary parties to the suit, but for the Chancery Amendment Act, and might have set up the statute by answer (*d*).

by negligence:

Such acts of negligence, or careless administration, as defeat the rights of creditors, or legatees, or parties entitled in distribution, amount to a *devastavit*.† For if persons accept the trust of executors, they must perform it: they must use due diligence, and not suffer the estate to be injured by their neglect (*e*). Thus if an executor has a lease for years, determinable upon the life of J. S., which is upon a reasonable estimate worth 200*l*., if the executor will not sell this but keeps it, and J. S. dies in a short time, yet the executor shall answer for the value of it at the time of the death of the testator; for it was his own fault that he would not sell it (*f*). So if an executor delays the payment of a debt payable on demand with interest, and suffers judgment for the principal and interest incurred after the testator's death, this is a *devastavit* for the interest, unless the executor can *show that the assets were insufficient to discharge the debt immediately (*g*). And where the executor permits debts carrying interest at 5*l*. per cent. to run on, when he had in his hands a fund

in not paying debts carrying interest:

preferring one creditor to another, nor to prevent the exercise of a right of retainer, nor in any case where it is not alleged that assets are being wasted. Re Wells, 45 C. D. 569. See *ante*, pp. *886, *887.

(*d*) Briggs *v.* Wilson, 5 De Gex, M. & G. 12. See also Beeching *v.* Morphew, 8 Hare, 129, where it was held, that in a creditor's bill against a husband and wife for a payment out of an estate of which the wife was administratrix, she alone might set up the statute in their joint answer. But where judgment has been recovered against an executor for a debt due by the testator, the statute cannot afterward be set up in an administration suit: Hunter *v.* Baxter, 3 Giff. 214.

† See note 1 on p.*1726 *ubi infra*.

(*e*) Tebbs *v.* Carpenter, 1 Madd. 298. See Eaves *v.* Hickson, 30 Beav. 136, where trustees were held liable who had paid over the trust fund to wrong persons, trusting to a forged marriage certificate. See also Hopgood *v.* Parkin, L. R. 11 Eq. 74, where a trustee was held liable for a loss of a trust fund, occasioned by the negligence of his solicitor. This case, however, was questioned by the Court of Appeal in Speight *v.* Gaunt, 22 C. D. 727.

(*f*) Phillips *v.* Phillips, 2 Freem. 12. Taylor *v.* Tabrum, 6 Sim. 281. See *ante*, p.*1535. Fry *v.* Fry, 27 Beav. 144. But see also Selby *v.* Bowie, 4 Giff. 300.

(*g*) Seaman *v.* Everard, 2 Lev. 40. Com. Dig. Admon. (I. 1). Bac. Abr. Exors. (L.) 1. So if an executor may save the penalty of a bond by payment of the less sum specified in the condition, or by other performance of the condition, and he neglect to do so, it will be a *devastavit* in him, if he have assets: 1 Saund. 333, *a*, note (7) to Hancock *v.* Prowd.

to pay them, he shall be charged with interest at that rate (*h*). But it must be observed, that where there is a sufficiency of assets for the payment of debts, executors may pay simple contract debts, not bearing interest, before specialty debts bearing interest, if not objected to by the specialty creditors; and the legatees are not at liberty to complain of the order of payment (*i*).

in not getting debts in.

Again, if the executor, by his delay in commencing an action, has enabled the debtor of his testator to protect himself under a plea of the Statute of Limitations, this amounts to a *devastavit* (*k*). So where the testator had lent out money on bond, and the executor during several years made one application, by an attorney, to the obligor, but brought no action against him, Lord Thurlow held, that the executor should be liable for the sum due, as having not been got in by reason of his neglect, although it did not appear whether the debt was or was not recoverable (*l*). So where, for more *than three years, the executors permitted money to remain due on bond to their testator, without inquiring into the circumstances and situation of the obligor, or calling upon him to pay in the money, Lord Alvanley held, that, on the obligor's becoming bankrupt, the executors were responsible (*m*). So where executors had suffered rent to be in arrear for several years, without taking any legal steps, by distress or otherwise, Sir Thomas Plumer held, that they should be charged with such arrears (*n*).

(*h*) Hall *v.* Hallet, 1 Cox, 134, 138. Dornford *v.* Dornford, 12 Ves. 130, note (29), 2nd edit. See also Bate *v.* Robins, 32 Beav. 73. See *infra*, pp.*1749, *1750, *et seq.*, as to charging executors with interest.

(*i*) Turner *v.* Turner, 1 Jac. & Walk. 39. And see now stat. 32 & 33 Vict. c. 46, *ante*, p.*869, by which the distinction as to priority of payment between specialty and simple contract debts of deceased persons was abolished.

(*k*) By Holt, C. J., in Hayward *v.* Kinsey, 12 Mod. 573. But see East *v.* East, 5 Hare, 348.

(*l*) Lowson *v.* Copeland, 2 Bro. Chanc. Cas. 156. In Clack *v.* Holland, 19 Beav. 271, 272, Romilly, M.R., said, that where it is the duty of an executor to obtain payment of a sum of money, he is exonerated, though he has taken no steps at all, provided it appears that if he had done so, they would have been, or there is reasonable ground for believing they would have been, ineffectual. But in such a case, it should seem that it lies on the executor to prove that, if he had taken proper measures to obtain payment, they would have failed: Stiles *v.* Guy, 16 Sim. 230.

(*m*) Powell *v.* Evans, 5 Ves. 839. See also Atty.-Gen. *v.* Higham, 2 Y. & Coll. Ch. C. 634, and *post*, p.*1717.

(*n*) Tebbs *v.* Carpenter, 1 Madd. 290. See Buxton *v.* Buxton, 1 Mylne & Cr. 95, by Sir C. Pepys, M.R. *Post*, p.*1718. Ratcliffe *v.* Winch, 17 Beav. 217.

And it was held by Lord Cottenham, that executors are equally chargeable with neglect in allowing a part of the assets to remain outstanding in an improper state of investment, whether the person in whose hands it is so outstanding be a co-executor or a stranger; and notwithstanding the will contains the usual indemity clause (*o*).

Devastavit by loss of the assets:

[See Stat. 22 & 23 Vict. c. 35, s. 31, *post*, p. *1735.]

There has been occasion to discuss, in a previous part of this work (*p*), the question of the liability of an executor or administrator, in respect of assets come fully into his possession and hands, and afterward lost to the estate (*q*). It was there stated, that an executor or administrator has been considered to stand in the condition of a gratuitous bailee, with respect to whom the law is, that he shall not be charged with*out some default in him. But this, as it appears from the judgment of Lord Ellenborough, in Crosse *v.* Smith (*r*), as the law then stood, must not be understood of the extent of the liability of an executor or administrator at law, but merely in equity: His lordship there observed that it had been suggested in argument, that an executor was to be considered as a mere ordinary bailee; but that this was an idea probably then for the first time suggested in a court of law (*s*): "As no case in law," continued the learned judge, "has yet decided that an executor once become fully responsible, by actual receipt of a part of his testator's property, for the due administration thereof, can found his discharge in respect thereof, as against a creditor seeking satisfaction out of the testator's assets, either on the score of inevitable accident, as destruction by fire, loss by robbery, or the like, or reasonable confidence disappointed, or loss by any of the various means which afford excuse to ordinary agents and bailees in cases of loss without any

at law:

(*o*) Styles *v.* Guy, 1 Mac. & G. 422. *Post*, p. *1734. See also Mucklow *v.* Fuller, Jacob. 198. Stiles *v.* Guy, 4 Y. & Coll. 571. Dix *v.* Burford, 19 Beav. 409. But see also Paddon *v.* Richardson, 7 De Gex, M. & G. 563.

(*p*) *Ante*, pp. *1534, *1535.

(*q*) In a case where the executor had lost a bond due to the testator, the court inclined to charge the executor with the debt; but for the present directed only that the defendant should prosecute a suit brought by him in equity against the obligor with effect, in order to recover the money due upon the bond that was lost: Goodfellow *v.* Burchett, 2 Vern. 299. It is now established, that a lost bond may be put in suit at law: Read *v.* Brookman, 3 T. R. 151. 1 Saund. 9, note (*a*).

(*r*) 7 East, 258.

(*s*) See, however, Wentw. Off. Ex. 235, 14th edit.

negligence on their part (*t*), I say as no such case in respect to executors has yet occurred in a Court of Law, we are not, from the particular hardship of the present case, authorized to make such a precedent in favor of this defendant."

However, a more lenient doctrine was established in the Courts of Equity (*u*), as will fully appear in the course of this section.

in equity:

Thus, if any goods of the testator are stolen from the possession of an executor, or from the possession of a third person, to whose custody they have been delivered by the executor, or are lost by casualty, as by accidental fire (*x*), *the executor shall not, in equity, be charged with these as assets (*y*).

loss by theft or casualty:

And now since by virtue of the Judicature Act, 1873, sect. 25, sub-s. 11, where there is any conflict or variance between the rules of equity and the rules of Common Law with reference to the same matter the rules of equity shall prevail, it follows that where the assets of a testator have come into the possession of an executor and are afterward lost to the estate the rule of law as well as of equity now is that the executor stands in the position of a gratuitous bailee and therefore cannot be charged without some willful default (*z*).

Again, where an executor puts out the money of his testator, though without the indemnity of a decree, upon a real security, which there was no reason then to suspect, but afterward such security proves bad, the executor is not account-

loss by invalid security:

(*t*) But see Wentw. *ubi supra*. Com. Dig. Assets (D.). *Ante*, p. *1535.

(*u*) See the judgment of Lord Eldon in Massey *v.* Banner, 1 Jac. & Walk. 248.

(*x*) Croft *v.* Lyndsey, 2 Freem. 1. It seems that executors are not bound either to insure or to continue the insurance of their testator: Bailey *v.* Gould, *coram* Alderson, B., 4 Y. & Coll. 221. Fry *v.* Fry, 27 Beav. 146. By sect. 7 of the Trustee Act, 1888 (51 & 52 Vict. c. 59), it is enacted that, (1) "It shall be lawful for, but not obligatory upon, a trustee (which, by sect. 1 (3), includes an executor or administrator) to insure against loss or damage by fire any building or other insurable property to any amount (including the amount of any insurance already on foot) not exceeding three equal fourth parts of the full value of such building or property, and to pay the premiums for such insurance out of the income thereof or out of the income of any other property, subject to the same trusts, without obtaining the consent of any person who may be entitled wholly or partly to such income."

(2) "This section shall not apply to any building or property which a trustee is bound forthwith to convey absolutely to any *cestui que trust* upon being requested so to do."

(*y*) Jones *v.* Lewes, 2 Ves. Sen. 240.

(*z*) See Job *v.* Job, 6 C. D. 562.

[*1705]

able for the loss, any more than he would have been entitled to the profits, had it continued good (*a*).†

(*a*) Brown *v.* Litton, 1 P. Wms. 141: but see Norbury *v.* Norbury, 4 Madd. 191. On the general question as to the precautions which an executor ought to take, and the extent to which he may properly lend, with reference to the value of the property to be mortgaged, see Stickney *v.* Sewell, 1 M. & Cr. 8, 15. Macleod *v.* Annesley, 16 Beav. 600. Phillipson *v.* Gatty, 7 Hare, 516. Farrar *v.* Barraclough, 2 Sm. & G. 231, 235. Ingle *v.* Partridge, 34 Beav. 411. Learoyd *v.* Whiteley, 12 App. Cas. 727. And see the provisions of the Trustee Act, 1888 (51 & 52 Vict. c. 59), (which, by sect. 1, sub-s. 3, applies to executors or administrators) as to the duties, powers, and liability of executors and administrators in lending money of the testator or intestate on real security. Such provisions, it should be observed, apply to investments made as well before as after the passing of the act, except where some action or other proceeding is pending with reference thereto at the passing of the act. They also apply to transfers of existing securities as well as to new securities (sect. 4, sub-s. 4).

Sect. 4. (1) "No trustee lending money upon the security of any property shall be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of such property, at the time when the loan was made, provided that it shall appear to the Court that in making such loan the trustee was acting upon a report as to the value of the property made by a person whom the trustee reasonably believed to be an able practical surveyor or valuer, instructed and employed independently of any owner of the property, whether such surveyor or valuer carried on business in the locality where the property is situate or elsewhere, and that the amount of the loan does not exceed two equal third parts of the value of the property as stated in such report, and that the loan was made under the advice of such surveyor or valuer expressed in such report. And this section shall apply to a loan upon any property of any tenure, whether agricultural or house or other property, on which the trustee can lawfully lend."

(2) "No trustee lending money upon the security of any leasehold property shall be chargeable with breach of trust only upon the ground that in making such loan he dispensed, either wholly or partially, with the production or investigation of the lessor's title."

(3) "No trustee shall be chargeable with breach of trust only upon the ground that, in effecting the purchase of any property or in lending money upon the security of any property, he shall have accepted a shorter title than the title which a purchaser is, in the absence of a special contract, entitled to require, if in the opinion of the Court the title accepted be such as a person acting with prudence and caution would have accepted."

(4) "This section shall apply to transfers of existing securities as well as to new securities, and to investments made as well before as after the passing of this Act, except where some action or other proceeding shall be pending with reference thereto at the passing of this Act."

5. (1) "Where a trustee shall have improperly advanced trust money on a

† See note on next page.

*But the rule is, never to permit a trustee or executor *after a decree* to account, to lay out money on mortgage, or to deal *with the assets for the purposes of investment, without the leave of the court: Where, therefore, the executor, after a decree, and consequently after he might have had the directions of the court, chooses to lay out the money on mortgage, if the transaction should appear to be for the benefit of the party entitled, the court will give him the advantage of it; but if otherwise, will consider the fund as money, and make the executor bring it into court (*b*).

loss by loans on personal security:

With respect to loans upon personal security, the Court of King's Bench, in Webster *v.* Spencer (*c*), was of opinion that an executor who had lent out on the security of a promissory note, money belonging to the testator, but not wanted for the immediate uses of the will, was not guilty of a *devastavit*, provided he exercised a fair and reasonable discretion on the subject (*d*). Nevertheless, although the lending itself may not amount to a legal *devastavit*, yet the rule is now completely established, that an executor or administrator, lending money of the deceased upon bond, promissory note, or other personal security, is guilty of a breach of trust (*e*), and shall be personally answerable if the security prove defective.†

mortgage security which would at the time of the investment have been a proper investment in all respects for a less sum than was actually advanced thereon, the security shall be deemed an authorized investment for such less sum, and the trustee shall only be liable to make good the sum advanced in excess thereof with interest."

(2) "This section shall apply to investments made as well before as after the passing of this Act, except where some action or other proceeding shall be pending with reference thereto at the passing of this Act."

† See note 1 on p.*1726 *ubi infra.*

(*b*) Widdowson *v.* Duck, 2 Meriv. 494, 498, 499. After an administration decree has been made, all powers of management of the estate which may be vested in trustees are subject to the control of the court, and the judge who exercises such control must be personally satisfied of the propriety of the course proposed to be adopted by the trustees: Bethell *v.* Abraham, L. R. 17 Eq. 24.

(*c*) 3 B. & Ald. 360.

(*d*) In this case, one of two executors had lent the money in question on the promissory note, and the question was, whether both the executors were properly joined as plaintiffs in an action to recover it: It was assumed, that if the loan had been a *devastavit*, the executor who was the lender ought to have sued alone in his individual character: But see the observations of Bayley, J., in Clarke *v.* Hougham, 2 B. & C. 155. *Ante*, p.*766.

(*e*) Terry *v.* Terry, Prec. Chanc. 273. Ryder *v.* Bickerton, 3 Swanst. 80, note. S. C. 1 Eden, 149, note. Adye *v.* Feuilleteau, 1 Cox, 24. S. C. 3 Swanst. 84,

*If, however, the will directs the executors to lay out the fund in real *or personal* securities, they would be justified, as against legatees, using a sound discretion, and fairly and honestly lending it to a person whom they considered responsible, at a reasonable interest (*f*): But the rule is different, it should seem, as against creditors (*g*): And though the will gives the executors power to lend on personal security, this does not enable them, even as against legatees, to *accommodate* a trader with a loan on his bond (*h*).

loss from loans to each other:

It must further be observed, that where a testator empowers his executors to lend money on personal security, he must be taken to rely upon the united vigilance of them all, with respect to the solvency of the borrowers: If one of them lends to the other, this object is defeated: consequently, such a loan is a breach of trust, and a misappropriation of the fund; and if any mischief arises to the estate of the testator therefrom, the executors will be liable (*i*). Accordingly, in Stickney *v.* Sewell (*k*), two executors were empowered, by will, to lend money on government, real, or personal security: One of them, in 1815, lent part of the fund to the other executor and his partner in trade upon mortgage: The mortgagors became bankrupt in 1831, and then the mortgaged property, which consisted in part of a windmill, a watermill, and a house in a town, being sold, produced considerably less than the sum advanced: And it was held by Sir C. Pepys, M.R., that the executors were liable for the deficiency.†

loss by fall of stocks;

*However, as it will presently appear (*l*), an executor is not justified in unnecessarily keeping his testator's money dead in his hands: and, therefore, if the exigencies of his

note. Holmes *v.* Dring, 1 Cox, 1. Wilkes *v.* Steward, Coop. 6. Vigrass *v.* Binfield, 3 Madd. 62. Walker *v.* Symonds, 3 Swanst. 63, overruling Harden *v.* Parsons, 1 Eden, 145. Bacon *v.* Clark, 3 My. & Cr. 294. Clough *v.* Bond, *ibid.* 490, 496. Bullock *v.* Wheatley, 1 Coll. 130.

(*f*) Forbes *v.* Ross, 2 Cox, 116.

(*g*) See Doyle *v.* Blake, 2 Sch. & Lef. 239, 240.

(*h*) Langston *v.* Ollivant, Coop. 33. See further, as to *devastavit* by suffering money to remain in the hands of bankers, &c., which, according to the directions of the trust, should have been invested in a particular mode: Bacon *v.* Clark, 3 My. & Cr. 294. Lowry *v.* Fulton, 9 Sim. 115.

(*i*) —— *v.* Walker, 5 Russ. 7. Gleadow *v.* Atkin, 2 Cr. & J. 548, 555. But if the one should give a bond to the other, to save him harmless from the consequences of such a breach of trust, the bond would be valid at law: Warwick *v.* Richardson, 10 M. & W. 284.

(*k*) 1 My. & Cr. 8.

† See note 1 on p. *1726 *ubi infra.*

(*l*) *Post*, p. *1716.

[*1708] [*1709]

office do not require otherwise, the executor should invest the unemployed money in investments authorized for that purpose by one of the Acts of Parliament to which reference is hereinafter made (*m*). The rule is that if an executor lays out the testator's money in such investments, he is not liable for the fall of stocks (*n*). But if he invests it in any other fund, which afterward sinks in value, the loss will be thrown on him, although there be no *mala fides* on his part (*o*). On the other hand, if any profit happen by the rise of the stock in *which the executor has laid out the money, he shall not have the benefit, but it shall accrue to the estate of his testator (*p*).

by not investing in the authorized funds:

And it should seem that if a testator die leaving stock in funds other than those authorized by Act of Parliament it is the duty of the executor (in the absence of express authority in the will to retain such stock) to transfer it into such authorized funds (*q*).

(*m*) Holland *v.* Hughes, 16 Ves. 114. Tebbs *v.* Carpenter, 1 Madd. 306. Norbury *v.* Norbury, 4 Madd. 191. Where a trustee has trust money in his hands, which he is authorized to lay out in the public funds or on real security, he is justified, pending the necessary delay in completing an anticipated mortgage, in investing the money in Exchequer Bills: Matthews *v.* Brise, 6 Beav. 239.

(*n*) Peat *v.* Crane, 2 Dick. 499, note. Franklin *v.* Frith, 3 Bro. Chanc. Cas. 434. Howe *v.* Lord Dartmouth, 7 Ves. 150. White & Tudor's Leading Cases, 6th edit., vol. ii. p. 321. So if he invests money in the three per cents., and *duly* appropriates the same for the benefit of a legatee, the executor shall not be liable for the fall of stocks: *Ex parte* Champion, cited in Hutcheson *v.* Hammond, 3 Bro. Chanc. Cas. 147. Fonbl. Treat. Eq. B. 2, c. 7, s. 6, note (*p*). But it is otherwise where the appropriation is unduly made: Thus where a legacy was left to A. on marrying with consent, and, till marriage, interest to be paid at three per cent.; and the executrix laid out a sum equal to the legacy, and conveyed to trustees in trust to pay the legacy with three per cent. interest, and to pay the surplus interest to her; it was holden that this was not a good appropriation, and, the stocks having fallen in value, that the executrix's estate should make it good: Cooper *v.* Douglas, 2 Bro. Chanc. Cas. 232. See *ante*, p. *1258.

(*o*) Hancom *v.* Allen, 2 Dick. 498. Howe *v.* Lord Dartmouth, 7 Ves. 150. Clough *v.* Bond, 3 My. & Cr. 497. See also Gordon *v.* Bowden, 6 Madd. 342. He was not answerable for any further loss than was occasioned by his buying the other stock instead of the three per cents.: Hynes *v.* Redington, 1 J. & L. 589. It may be doubted whether, where trustees had the power of investing moneys in government securities, they were, even before the passing of the Acts of Parliament hereinafter referred to, absolutely bound to select three per cents. for that purpose: See Angell *v.* Dawson, 3 Y. & Coll. 316, *per* Alderson, B. Robinson *v.* Robinson, 1 De G. M. & G. 255, 256, by Lord Cranworth.

(*p*) Phayre *v.* Peree, 3 Dow. 128.

(*q*) See Howe *v.* Lord Dartmouth,

Formerly the only fund in which an executor might properly invest the unemployed money of the testator was the 3*l.* per cent. consols, *i.e.*, the fund adopted by the Court of Chancery, and an executor investing in such security was held by the court not to be liable for any fall which might take place, although if he invested in any other fund which afterward sank in value he was held liable for such depreciation even in the absence of any *mala fides* on his part. But now the class of investments authorized for trust funds has been considerably enlarged, and the trustee or executor investing in any of the authorized funds will not be responsible for any fall in value.

Authorized trust investments: Trust Investment Act, 1889.

Most of the provisions now in force for authorizing these investments are contained in the Trust Investment Act, 1889 (52 & 53 Vict. c. 32), which enacts:—Sect. 3. "It shall be lawful for a trustee (*qq*) unless expressly forbidden by the instrument (if any) creating the trust, to invest any trust funds in his hands (*r*), in manner following, that is to say:—

*(a) In any of the Parliamentary Stocks or Public Funds or Government Securities of the United Kingdom:

(b) On real or heritable securities in Great Britain or Ireland: (*s*)

(c) In the Stock of the Bank of England or the Bank of Ireland:

(d) In India 3½ per cent. Stock, and India Three per cent. Stock or in any other Capital Stock which may at any time hereafter be issued by the Secretary of State in Council

White & Tudor's Leading Cases, 6th edit., vol. ii., p. 321.

(*qq*) Which, by sect. 9, includes an executor or administrator and a trustee whose trust arises by construction or implication of law, as well as an express trustee.

(*r*) This power of investment does not extend to authorizing trustees to set apart or appropriate any of such stocks to answer a particular purpose, *e.g.*, to provide for an annuity given by will, so as to facilitate the distribution of the testator's estate: Re Owthwaite, [1891] 3 Ch. 423.

The words "trust funds in his hands" are not confined to trust moneys awaiting investment, but include all trust funds in the hands of the trustee, whether at the time in a state of investment or not. Hume *v.* Lopes, [1892] A. C. 112, affirming the decision of the Court of Appeal in Re Dick, [1891] 1 Ch. 423.

(*s*) See sect. 9 of the Trustee Act, 1888 (51 & 52 Vict. c. 59), which provides that: "A power to invest trust money in real securities shall authorize and be deemed to have always authorized an investment upon mortgage of property held for an unexpired term of not less than two hundred years, and not subject to any reservation of rent greater than one shilling a year, or to any right of redemption, or to any condition for re-entry except for non-payment of rent."

[*1711]

of India, under the authority of Act of Parliament, and charged on the revenues of India:

(e) In any securities the interest of which is or shall be guaranteed by Parliament:

(f) In Consolidated Stock created by the Metropolitan Board of Works, or which may at any time hereafter be created by the London County Council, or in Debenture Stock created by the Receiver for the Metropolitan Police District:

(g) In the Debenture or Rentcharge or Guaranteed or Preference Stock of any railway company in Great Britain or Ireland incorporated by special Act of Parliament, and having during each of the ten years last past before the date of investment paid a dividend at the rate of not less than three per centum per annum on its ordinary stock:

(h) In the stock of any railway or canal company in Great Britain or Ireland whose undertaking is leased in perpetuity or for a term of not less than 200 years at a fixed rental to any such railway company as is *mentioned in subsection (g), either alone or jointly with any other railway company:

(i) In the Debenture Stock of any railway company in India, the interest on which is paid or guaranteed by the Secretary of State in Council of India:

(j) In the "B." Annuities of the Eastern Bengal, the East Indian and the Scinde Punjaub and Delhi Railways, and any like annuities which may at any time hereafter be created on the purchase of any other railway by the Secretary of State in Council of India, and charged on the revenues of India, and which may be authorized by Act of Parliament to be accepted by trustees in lieu of any stock held by them in the purchased railway:

(k) In the stock of any railway company in India upon which a fixed or minimum dividend in sterling is paid or guaranteed by the Secretary of State in Council of India:

(l) In the Debenture or Guaranteed or Preference Stock of any company in Great Britain or Ireland, established for the supply of water for profit, and incorporated by special Act of Parliament or by Royal Charter, and having during each of the ten years last past before the date of in-

[*1712]

vestment paid a dividend of not less than 5*l.* per centum on its ordinary stock:

(m) In nominal or inscribed stock issued, or to be issued, by the corporation of any municipal borough, having according to the return of the last census prior to the date of investment a population exceeding fifty thousand, or by any County Council, under the authority of any Act of Parliament or Provisional Order:

(n) In nominal or inscribed stock issued, or to be issued, by any commissioners incorporated by Act of Parliament for the purpose of supplying water, and having a compulsory power of levying rates over an area *having, according to the returns of the last census prior to the date of investment, a population exceeding fifty thousand, provided that during each of the ten years last past before the date of investment the rates levied by such commissioners shall not have exceeded 80 per centum of the amount authorized by law to be levied:

(o) In any of the stocks, funds, or securities for the time being authorized for the investment of cash under the control or subject to the order of the court: (*t*)

and also from time to time to vary any such investment (*u*).

Purchase at a premium of redeemable stocks.

Sect. 4. (1) "It shall be lawful for a trustee under the powers of this Act to invest in any of the stocks, funds, shares, or securities mentioned or referred to in section 3 of the Act, notwithstanding that the same may be redeemable, and that the price exceeds the redemption value.

(2) "Provided that it shall not be lawful for a trustee under the powers of this Act to purchase at a price exceeding its redemption value any stock mentioned or referred to in sub-sections (g), (i), (k), (l), and (m), which is liable to be redeemed within fifteen years of the date of purchase at par or at some other fixed rate, or to purchase any such stock as is mentioned or referred to in the sub-sections aforesaid, which is liable to be redeemed at par or at some other fixed rate, at a price exceeding fifteen per centum above par or such other fixed rate.

(*t*) See R. S. C. 1883, Order XXII. r. 17.

(*u*) These words are not confined to investments made under the act, but extend to any investment, whenever made, upon any such stocks, funds, or securities, as are mentioned in the section: Re Dick [1891], 1 Ch. 423; affirmed in the House of Lords, *sub nom.* Hume *v.* Lopes, [1892] A. C. 112.

[*1713]

(3) "It shall be lawful for a trustee to retain until redemption, any redeemable stock, fund, or security which may have been purchased in accordance with the powers of this Act.

Sect. 5. "Every power conferred by this Act shall be exercised according to the discretion of the trustee, but subject *to any consent required by the instrument (if any) creating the trust with respect to the investment of the trust fund.

Discretion of trustees.

Sect. 6. "This Act shall apply as well to trusts created before as to trusts created after the passing of this Act, and the powers hereby conferred shall be in addition to the powers conferred by the instrument, if any, creating the trust."

And further apart from this act the following investments of trust moneys have been authorized by other acts under certain restrictions. Thus trustees may invest in—

Investments authorized apart from Investment Act, 1889.

(1) Debenture stock of companies whose mortgages or bonds are authorized as an investment, unless the contrary is expressed: 34 & 35 Vict. c. 27.

(2) Debentures issued under 28 & 29 Vict. c. 78, as amended by 33 & 34 Vict. c. 20, in cases where trustees can invest in the shares, stock, mortgages, bonds, or debentures of companies incorporated by, or acting under an Act of Parliament: 28 & 29 Vict. c. 78, s. 40.

(3) Securities of the Government of the Isle of Man created under 43 & 44 Vict. c. 8, where trustees can invest in Isle of Man or Colonial Government securities unless the contrary is expressed: 43 & 44 Vict. c. 8, s. 7.

(4) Charges under the Improvement of Land Act, 1864, or mortgages thereof, where trustees can invest in real securities, unless the contrary is expressed: 27 & 28 Vict. c. 114, s. 60.

(5) Nominal debentures or nominal debenture stock issued under the Local Loans Act, 1875, where the trustees may invest in the debentures or debenture stock of any railway or other company unless the contrary is expressed: 38 & 39 Vict. c. 83, s. 27.

And further many local Acts of Parliament contain express provisions authorizing trustees to invest in the stocks and debentures thereby authorized to be created (*x*).

(*x*) See Wolstenholme & Brinton's Conveyancing Acts, 6th edit. p. 193. Lewin on Trusts, 9th edit. p. 349.

[*1714]

Consequence of not converting property bequeathed for life with remainder over:

*Again, it has already appeared (*y*), that where personal property is bequeathed for life, with remainder over, and not specifically, it is the duty of the executor, with certain exceptions, to convert it; and the tenant for life is entitled only upon that principle. In the case of Dimes *v.* Scott (*z*), a testator gave the residue of his personal estate to trustees, directing them to convert it into money, and invest the proceeds in government or real securities, of which they were to stand possessed, upon trust for A. during her life, and after her death, for B.: The trustees permitted a share which the testator had in an Indian loan, bearing interest at 10*l.* per cent., to remain for several years on that security, during which time they paid to A. the interest at 10*l.* per cent., which it yielded annually; and the loan being afterward paid off, they invested the money in the three per cents., at a time when the funds were so low that the amount of stock purchased was considerably greater than if the conversion had taken place at the end of a year from the testator's death: And it was held by Lord Gifford, that the tenant for life was not entitled to the actual interest which the money yielded, while it remained on the Indian security, but only to the dividends of so much three per cent. stock as would have been purchased with it at the end of a year from the testator's death; that the trustees ought to be charged with the whole of the stock actually purchased, and all the sums actually received in respect of the Indian rate of interest; and they ought to be allowed in their discharge, as payments to the tenant for life, not the sums which they had, in fact, paid her, but only a sum equal to what she would have received for dividends, if the money had been transferred from the Indian security, and invested in the three per cent. stock at the end of a year from the testator's death: And this decision was confirmed, on appeal, by Lord Lyndhurst. In the case of Mackenzie *v.* Taylor (*a*), *where the testator gave his residuary personal estate to his executors upon trust, as soon as convenient after his death, to convert into money and invest the same, and the executors allowed it to be enjoyed in specie by Mrs. M., the tenant for life, as long as she lived, but three years after her death, they accounted for the value and paid it into court; it was held by Lord Langdale that they ought to pay interest at four per cent. from her death to the day of such payment. In Wightwick *v.* Lord (*b*), in a case where the will

(*y*) *Ante*, p. *1248.
(*z*) 4 Russ. Chanc. Cas. 195.
(*a*) 7 Beav. 467.
(*b*) 6 H. L. C. 217.

[*1715] [*1716]

gave no specific directions as to the payment of debts, the executor, who was also the ultimate residuary legatee, did not ascertain and secure the residue at the end of the year, but worked part of the property (a coal mine) to a profit for several years, when it ceased to be of any value; it was held, on a bill at the suit of a person having a charge for life on the residue, that the executor was not entitled to postpone the sale of the property to the prejudice of such person, and that having postponed it, he was chargeable with the value of the mine at the end of the year from the testator's death with interest thereon, and that that value must be calculated as constituted of the aggregate of the annual profits derived from the mine in all the subsequent years till it became unproductive, such annual profits to be treated as deferred payments.

But in Baud *v.* Fardell (*c*) it was held that an executrix, who was also tenant for life under a will directing the residuary estate to be sold and the proceeds invested in government or other good securities, was not liable for not converting into consols a sum of Navy 5*l.* per cents. forming part of the residuary estate: for she had a discretion expressly reposed in her as to the nature of the investment.

Consequences of retaining in hand instead of investing; or of investing on a deficient security:

[See Stat. 22 & 23 Vict. c. 35, s. 31, *post*, p. *1735.]

Where trustees are bound by the terms of their trust to invest the money in the public funds, and instead of doing so, they retain the money in their hands, or invest it upon an insufficient security, the *cestuis que trust* may elect to *charge them either with the amount of the money, or with the amount of the stock which they might have purchased with the money (*d*): Where, however, the trustees are not bound to invest the money in the public funds, or in any specific security, but by the terms of the trust have a discretion to invest it in various ways, the authorities were conflicting on the question whether, if the trustees fail to invest as prescribed, the *cestuis que trust* can claim to charge them with the value of some particular security that might have been obtained, or whether they are merely chargeable with the whole amount of the trust fund, together with interest (*e*). But this question has been settled in favor

(*c*) 7 De Gex, M. & G. 628.

(*d*) Shepherd *v.* Mouls, 4 Hare, 503, 504. Pride *v.* Fooks, 2 Beav. 430. Robinson *v.* Robinson, 1 De Gex, M. & G. 256.

(*e*) Hockley *v.* Bantock, 1 Russ. 141. Watts *v.* Girdlestone, 6 Beav. 188. Ames *v.* Parkinson, 7 Beav. 379, were in favor of the former view: Marsh *v.* Hunter, 6 Madd. 295, and Shepherd *v.* Mouls, 4 Hare, 500, of the latter.

of the latter view, by the decision of the lords justices in Robinson *v.* Robinson (*f*).

loss by not calling in money on securities, or in hands of banker.

This consideration leads to the question, how far an executor or administrator is liable, in respect of losses occasioned by not calling in the money of the testator already invested upon securities.† Executors ought not, without great reason, to permit money to remain upon personal security longer than is absolutely necessary: Accordingly, in Powell *v.* Evans (*ff*), executors were charged with a loss caused by neglecting to call in money lent by the testator on bond (*g*). Though the *prima facie* rule is that executors should get in the assets of the testator within a year (*h*), *there is no inflexible rule, it would seem, as to the time within which they are bound to do so. In every case the particular circumstances must govern, and the court allows the executors a reasonable discretion (*i*). Where executors have neglected to realize assets which are outstanding upon an improper investment there is no fixed period at which the loss is to be calculated. It depends on the particular nature of the property and the evidence affecting it. Thus in Hughes *v.* Empson (*k*) losses were occasioned by the non-sale of Crystal Palace shares which were at a premium at the testator's death, but which subsequently fell to a discount, and the executors were charged with the value at the end of twelve months. So in Moyle *v.* Moyle (*l*), executors and trustees who, for upward of a year after the testator's death, allowed a considerable portion of the assets to be unproductive in the hands of a banker who failed, were, under the circumstances, charged with the loss (*m*). So executors were held personally liable in respect to the loss to the

(*f*) 1 De Gex, M. & G. 247. See also Knott *v.* Cottee, 16 Beav. 80, 81, by Romilly, M.R.

† See note 1 on p. *1726.

(*ff*) 5 Ves. 839.

(*g*) See also *ante*, p. *1694. Rowley *v.* Adams, 4 Mylne & Cr. 496, and Eagleton *v.* Kingston, 8 Ves. 466, 467. Atty.-Gen. *v.* Higham, 2 Y. & Coll. Chan. C. 634. The money, when called in, should be invested in the three per cents. or other authorized fund, if there is no present occasion for it: Howe *v.* Lord Dartmouth, 7 Ves. 149, 150. This seems a sufficient answer to the inquiry of Lord Camden in Orr *v.* Newton, 2 Cox, 276.

(*h*) Grayburn *v.* Clarkson, L. R. 3 Ch. 605, 606, *per* Page-Wood, L.J. Sculthorpe *v.* Tipper, L. R. 13 Eq. 232.

(*i*) Hughes *v.* Empson, 22 Beav. 181, 183, *per* Romilly, M.R. Marsden *v.* Kent, 5 C. D. 598.

(*k*) 22 Beav. 181.

(*l*) 2 Russ. & M. 710.

(*m*) See Johnson *v.* Newton, 11 Hare, 168, 169.

testator's estate of a sum outstanding on personal security, although the security was that of a bond of the testator's solicitor, and the money had been invested in that security by the testator some years before his death, and by his will he directed that his trustees should get in his outstanding estate "as soon as conveniently might be" after his decease (*n*). But in Buxton *v.* Buxton (*o*), an executor who allowed part of a testator's assets to remain invested in Mexican bonds for a year and seven months after the testator's death, and eventually sold the bonds at a lower price than might have been obtained by a sale at an earlier period, but who appeared to have acted throughout with diligence and good faith, was held, by Sir C. C. Pepys, M.R., under the circumstances, not to be liable for the loss consequent on his not *having sold them sooner: And his Honor further held, that a difference of opinion between two executors, as to the propriety of converting the assets at a particular period, followed by a demand made by one of them upon the other, to concur in effecting an immediate conversion, does not deprive the latter of the right to exercise his own discretion, or render him liable for the loss that may arise from the delay consequent on his declining to comply with the demand (*p*). This case has been followed in the case of Marsden *v.* Kent (*q*), where the court held that where the executors had acted in the honest exercise of their discretion as to the time of selling property of a very uncertain and speculative character, they ought not to be made personally responsible for the loss arising from their not having sold within the twelvemonth.

Where executors have an absolute discretion to postpone sale of testator's estate.

Executors acting under a will by which *an absolute discretion is given to them to postpone the sale and conversion of the testator's estate* are not bound by the ordinary rule above referred to, viz., to convert the property within a year, even though some of the property consists of shares in an unlimited company, nor will they be liable in the absence of *mala fides* for loss arising to the estate from the non-conversion (*r*). So too an express power to retain existing investments takes a case out of the rule as to the conversion of perishable property (*s*).

It is not the duty of an executor to call in money invested on real security, where no risk is apparent; nor are executors bound to

(*n*) Bullock *v.* Wheatley, 1 Coll. 130.
(*o*) 1 Mylne & Cr. 80.
(*p*) See also East *v.* East, 5 Hare, 348.
(*q*) 5 C. D. 598.
(*r*) Re Norrington, 13 C. D. 654.
(*s*) Gray *v.* Siggers, 15 C. D. 74.

[*1719]

convert leasehold property into three per cent. stock, unless under particular circumstances (*t*).

Loss by failure of banker, solicitor, &c.

[See Stat. 22 & 23 Vict. c. 35, s. 31, *post*, p. *1735.]

Generally speaking, if an executor appoints another to receive the money of his testator, and he receives it, it is the same thing as if the executor himself had actually received *it, and will be assets in his hands; and, consequently, appointing another to receive, who will not repay, is a *devastavit* (*u*). Thus, in a case where the will directed that one Edward Pistor should carry on the business of the testator to a given day, for the benefit of his estate, and the executors, from the confidence thus reposed by the testator in Pistor, permitted him to get in debts, without anything appearing on the will to show the testator's intention to that effect, the Court of Exchequer held, that the executors must answer to the residuary legatee for the money so received by their agent (*x*). So where trustees for sale sold the trust property and placed the conveyance executed by them and having their receipt indorsed, in the hands of a solicitor, who received and misapplied the purchase-money, they were held liable for a breach of trust (*y*). Again, where trustees left some Exchequer Bills, in which they had properly invested trust money, in the hands of a broker, they were held personally liable upon a misapplication of the bills by the broker (*z*).

But with respect to losses sustained by the failure of bankers, or other persons into whose hands the money of the testator has been deposited by the executor, the rule seems to be, that where the deposit was made from necessity, or conformably to the common usage of mankind, the executor will not be responsible for the loss (*a*). So

(*t*) Howe *v.* Lord Dartmouth, 7 Ves. 150. *Ante*, p. *1248 *et seq.* As to whether Turnpike Bonds are real securities, see Robinson *v.* Robinson, 1 De Gex, M. & G. 247, and Cavendish *v.* Cavendish, 30 C. D. 227.

(*u*) Jenkins *v.* Plombe, 6 Mod. 93.

(*x*) Pistor *v.* Dunbar, 1 Anstr. 107.

(*y*) Ghost *v.* Waller, 9 Beav. 497. See also Bostock *v.* Floyer, L. R. 1 Eq. 26. Sutton *v.* Wilders, L. R. 12 Eq. 373. Re Brier, 26 C. D. 238. The liability of the executor, according to the case of Speight *v.* Gaunt, 9 A. C. 1, affirming the decision of the Court of Appeal reported in 22 C. D. 727, would seem to depend on whether the defaulting agent was properly employed. If he was properly employed in the ordinary course of business, the executor would not seem to be liable. Sutton *v.* Wilders (*ubi sup.*) would probably be decided differently since Speight *v.* Gaunt.

(*z*) Matthews *v.* Brise, 6 Beav. 239. See also Rowland *v.* Witherden, 3 Mac. & G. 568, and stat. 22 & 23 Vict. c. 35, s. 31, *post*, p. *1735.

(*a*) Churchill *v.* Hobson, 1 P. Wms. 243. Knight *v.* Lord Plymouth, 3 Atk. 480. S. C. 1 Dick. 120. *Ex parte* Bel-

if the executor, living in London, and receiving money of the testator, should *remit to an attorney in the country to pay the debts there, and the attorney becomes insolvent, the executor will not be chargeable, if the business was transacted in the ordinary manner without any circumstance to show suspicion (*b*). So where executors employ an auctioneer to sell the leaseholds, or other portion of the assets, who receives the deposit and fails to pay it over, the executors will not, generally speaking, be held personally liable for the loss (*c*). But in Darke *v.* Martyn (*d*), where a testator died in March, 1823, and in January, 1824, and January, 1825, the executors and trustees deposited part of the assets in the hands of bankers on their notes carrying interest; and the bankers failed in November, 1825; Lord Langdale, M.R., held, that *as no necessity had been shown for such deposit*, the trustees were personally responsible for the loss (*e*). So where a trustee deposited a trust fund with his bankers, accompanied by an order in writing to invest the money in consols, he was held answerable for the omission of the bankers to make the investment, where he made no subsequent inquiry respecting it, until about five months afterward, when the bankers became bankrupt (*f*). And if an executor pays the money of the testator into a banker's, not on any distinct account, but *mixing it with his own money*, it should seem that the executor will be answerable for the loss sustained by the failure of the banker (*g*).

chier, Ambl. 219. Rowth *v.* Howell, 3 Ves. 565. Adams *v.* Claxton, 6 Ves. 226. Wilks *v.* Groom, 3 Drewr. 584. Swinfen *v.* Swinfen, 29 Beav. 211. Johnson *v.* Newton, 11 Hare, 160. Mendes *v.* Guedalla, 2 J. & H. 259. Fenwick *v.* Clarke, 31 L. J. Ch. 728. Re Bird, L. R. 16 Eq. 203. Speight *v.* Gaunt, 9 App. Cas. 1. Re Brier, 26 C. D. 238.

(*b*) Bacon *v.* Bacon, 5 Ves. 334, 335. Castle *v.* Warland, 32 Beav. 660.

(*c*) Edmonds *v.* Peake, 7 Beav. 239. See also stat. 22 & 23 Vict. c. 35, s. 31, *post*, p. *1735.

(*d*) 1 Beav. 525.

(*e*) See also Rehden *v.* Wesley, 29 Beav. 213.

(*f*) Challen *v.* Shippam, 4 Hare, 555.

(*g*) Wren *v.* Kirton, 11 Ves. 377. Fletcher *v.* Walker, 3 Madd. 73. Massey *v.* Banner, 4 Madd. 413. S. C. 1 Jac. & Walk. 241. Robinson *v.* Ward, Ry. & Mood. 274. S. C. 2 C. & P. 59. See also Salway *v.* Salway, 2 Russ. & M. 215, in which case, Lord Broughham held (overruling the decision of Sir J. Leach, M.R., 4 Rus. 60), that a receiver appointed by the court is answerable for the loss of moneys consequent on the failure of a banker with whom they have been deposited for security, if the deposit be made in such a way that the receiver parts with the absolute control over the fund: This judgment was afterward affirmed in Dom. Proc.: White *v.* Baugh, 9 Bligh, 181.

[*1721]

*The whole of the law on this particular point has been recently reviewed in the House of Lords in the case of Speight v. Gaunt (*h*). The general result seems to be this: Trustees are not bound personally to transact such business connected with or arising out of the proper duties of their trust, as according to the usual mode of conducting business of a like nature persons acting with reasonable care and prudence on their own account would ordinarily conduct through mercantile agents; and where, according to the usual and regular course of such business (*i*), moneys receivable or payable ought to pass through the hands of such mercantile agents (*k*), that course may properly be followed by trustees, though the moneys are trust moneys; and if under such circumstances, and without any other misconduct or default on the part of the trustees, a loss takes place through any fraud or neglect of the agents employed, the trustees are not liable to make good such loss (*l*). In conformity with this doctrine the statute 22 & 23 Vict. c. 35, s. 31 (*m*), enacts *that every instrument creating a trust shall be deemed to contain a clause exonerating the trustees from liability "for any banker, broker, or other person, with whom any trust moneys or securities may be deposited."

Review of law in Speight v. Gaunt.

But neither this statute nor the doctrine of *Ex parte* Belchier (*mm*) authorizes a trustee to delegate, at his own mere will and pleasure the execution of his trust, and the care and custody of the trust moneys, to strangers, in any case in which there is no moral necessity from the usage of mankind for the employment of such an agency. The

(*h*) 9 A. C. 1.

(*i*) Where an executor or trustee employs an agent to collect money under circumstances which make such employment proper, and the money collected is lost by the agent's insolvency, the burden of proof is not on the executor to show that the loss was not attributable to his own default, but on the persons seeking to charge him to prove that it was. Re Brier, 26 C. D. 238.

(*k*) This rule is subject to the limitation that the agent must not be employed out of the ordinary scope of his business. It is not part of the ordinary business of a solicitor to choose a valuer for trustees intending to invest money on mortgage. Fry v. Tapson, 28 C. D. 268.

(*l*) *Ex parte* Belchier, Amb. 218. A trustee although remunerated for his services is not liable for loss occasioned to the trust estate by the felonious acts of his servant, provided such servant is properly intrusted with the custody of the trust property, and is selected and employed without negligence: and *semble*, the liability of a trustee is not increased by the fact of his being remunerated for his services. Jobson v. Palmer, [1893] 1 Ch. 71.

(*m*) See *infra*, p. *1735.

(*mm*) Amb. 218.

[*1722] [*1723]

cases of Rowland *v.* Witherden (*n*), Bostock *v.* Floyer (*o*), and many others show that trustees bound to invest trust moneys in authorized securities are *prima facie* answerable for the proper care and custody of such trust moneys, until they are actually so invested; and will not be exonerated from liability if, in the meantime, they leave them in other hands, though the hands of professional advisers or agents, to whose assistance, for many purposes connected with the trust, they may properly have recourse (*p*).

General result of authorities as to the liability of executors for loss of assets.

The result of all the best authorities on the subject of the general liability of executors was thus stated by Lord Cottenham, in his judgment in the case of Clough *v.* Bond (*q*): "Although a personal representative, acting strictly within the line of his duty and exercising reasonable care and diligence, will not be responsible for the failure or depreciation of the fund in which any part of the estate may be invested, or for the insolvency or misconduct of any person who may have possessed it, yet, if that line of duty be not strictly pursued, and any part of the property be invested by such personal representative in funds or upon securities not authorized, or be put within the control of persons who ought not to be intrusted with it, and a loss be thereby eventually sustained, such personal representative will be liable to make *it good however unexpected the result, however little likely to arise from the course adopted, and however free such conduct may have been from any improper motive (*r*). Thus if he omit to sell property when it ought to be sold, and it be afterward lost without any fault of his, he is liable (*s*); or if he leave money due upon personal security, which, though good at the time, afterward fails (*t*). And the case is stronger if he be himself the author of the improper investment, as upon personal security, or an unauthorized fund. Thus he is not liable, upon a proper investment in the three per cents., for loss occasioned by the fluctuations of that fund (*u*), but

(*n*) 3 Mac. & G. 568, 574.

(*o*) 35 Beav. 603, 606. L. R. 1 Eq. 26.

(*p*) See *per* Lord Selborne, L.C., in Speight *v.* Gaunt, 9 A. C. 1, 5.

(*q*) 3 Mylne & Cr. 496.

(*r*) Of course if there be fraud or willful default on the part of the executor, or he be actuated by an improper motive, he will be liable for any loss. De Cordova *v.* De Cordova, 4 A. C. 692.

(*s*) Phillips *v.* Phillips, 2 Freem. 11. *Ante*, p. *1701. Fry *v.* Fry, 27 Beav. 144.

(*t*) Powell *v.* Evans, 5 Ves. 839. Tebbs *v.* Carpenter, 1 Madd. 290. *Ante*, p. *1703. See also p. *1718.

(*u*) Peat *v.* Crane, 3 Dick, 499, note. *Ante*, p. *1709.

[*1724]

he is for the fluctuations of any unauthorized fund (*x*). So when the loss arises from the dishonesty or failure of any one to whom the possession of part of the estate has been intrusted: Necessity, which includes the regular course of business in administering the property, will, in equity, exonerate the personal representative: But, if without such necessity, he be instrumental in giving to the person failing possession of any part of the property, he will be liable although the person possessing it be a co-executor or co-administrator" (*y*).

*In conclusion, the sections here set out of the following two statutes should be noted.

44 & 45 Vict. c. 41, s. 56.

By sect. 56 of the Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), it is provided that:—

Receipt in deed or indorsed authority for payment to solicitor.

(1) "Where a solicitor produces a deed, having in the body thereof or indorsed thereon a receipt for consideration money or other consideration, the deed being executed, or the indorsed receipt being signed, by the person entitled to give a receipt for that consideration, the deed shall be sufficient authority to the person liable to pay or give the same for his paying or giving the same to the solicitor, without the solicitor producing any separate or other direction or authority in that behalf from the person who executed or signed the deed or receipt."

(2) "This section applies only in cases where consideration is to be paid or given after the commencement of this Act."

And by sect. 2 of the Trustee Act, 1888 (51 & 52 Vict. c. 59), it is provided that:—

(*x*) Hancom *v.* Allen, 2 Dick. 498. Howe *v.* Lord Dartmouth, 7 Ves. 137. *Ante*, p. *1709.

(*y*) Langford *v.* Gascoyne, 11 Ves. 333, *post*, p.*1730. Shipbrook *v.* Lord Hinchinbrook, 11 Ves. 252. 16 Ves. 477, *post*, p.*1730. Underwood *v.* Stevens, 1 Meriv. 712, *post*, p.*1736. Styles *v.* Guy, 1 Mac. & G. 422, *post*, p.*1734. Trutch *v.* Lamprell, 20 Beav. 116. The following are cases bearing on the general principles above stated, *viz.*, Bacon *v.* Clark, 3 My. & Cr. 294. Lowry *v.* Fulton, 9 Sim. 115. Munch *v.* Cockerell, 9 Sim. 339. 5 M. & Cr. 178. Broadhurst *v.* Balguy, 1 Y. & Coll. Ch. C. 16. Booth *v.* Booth, 1 Beav. 125. Phillipson *v.* Gatty, 7 Hare, 516. Byrne *v.* Norcott, 13 Beav. 336. Garner *v.* Moore, 3 Drewr. 277. Lander *v.* Weston, 3 Drewr. 389. Collinson *v.* Lister, 20 Beav. 356. 7 De G. M. & G. 634. Gibbins *v.* Taylor, 22 Beav. 344. Selby *v.* Bowie, 4 Giff. 300. Griffith *v.* Porter, 25 Beav. 236. Fry *v.* Fry, 27 Beav. 144, 146.

[*1725]

(1) "It shall be lawful for a trustee (*z*) to appoint a solicitor to be his agent to receive and give a discharge for any money or any valuable consideration or property receivable by such trustee under the trust by permitting such solicitor to have the custody of, and to produce, a deed containing any such receipt as is referred to in the 56th section of the Conveyancing and Law of Property Act, 1881 (*zz*); and no trustee shall be chargeable with breach of trust by reason only of his having made or concurred in making any such appointment; and the producing of any such deed by such solicitor shall have the *same validity and effect, by virtue of the said 56th section, as the same would have had if the person appointing such solicitor had not been a trustee: Provided that nothing herein contained shall exempt a trustee from any liability which he would have incurred if this Act had not passed, in case he permits such money, valuable consideration, or property to remain in the hands or under the control of the solicitor appointed as aforesaid for a period longer than is reasonably necessary to enable such solicitor to pay or transfer the same to the trustee."

51 & 52 Vict. c. 59, s. 2. Receipt of money by solicitor as agent.

(2) "It shall be lawful for a trustee to appoint a banker or solicitor to be his agent to receive and give a discharge for any money payable to such trustee under or by virtue of a policy of assurance by permitting such banker or solicitor to have the custody of and to produce such policy of assurance, with a receipt signed by such trustee, and no trustee shall be chargeable with a breach of trust by reason only of his having made or concurred in making any such appointment: Provided that nothing herein contained shall exempt a trustee from any liability which he would have incurred if this Act had not passed, in case he permits such money to remain in the hands or under the control of the banker or solicitor appointed as aforesaid for a period longer than is reasonably necessary to

(*z*) Which in this act by sect. 1 (3) includes an executor or administrator.
(*zz*) *Ubi supra.*

[*1726]

enable such banker or solicitor to pay the same to the trustee."

(3) "This section shall apply only where the money or valuable consideration or property is to be received after the passing of this Act."

1. *Torts of Personal Representative.* In general, an executor or administrator is liable individually, and not in his representative capacity, for injury to third parties by his tortious acts, *e. g.*, by taking and disposing of property belonging to such parties, Polhemus *v.* Middleton, 10 Stew. (N. J.) 240; or for a detinue of goods under a conversion committed by the decedent, Hench *v.* Metzer, 6 Serg. & R. 272; although claiming to hold by virtue of his letters, Denny *v.* Booker, 2 Bibb 427; or for surplus moneys belonging to a debtor of the estate after payment of the debt out of the collateral furnished by him, Cronan *v.* Cotting, 99 Mass. 334; or even for crops belonging to the heir, but taken by the administrator and accounted for as assets of the estate. Rodman *v.* Rodman, 54 Ind. 444. So, the executor or administrator is liable individually for fraud in his sale of property of the estate, either by his misrepresentation, Fritz *v.* McGill, 31 Minn. 536; West *v.* Wright, 98 Ind. 335; or concealment of the truth. Warren *v.* Banning, 21 N. Y. Supp. 883.

But the estate is chargeable with the value of property taken by the executor or administrator as such and applied as assets of the estate. Simpson *v.* Snyder, 54 Ia. 557; Clapp *v.* Walters, 2 Tex. 130.

And where the tortious act is by negligent mismanagement of property or business of the deceased resulting in nuisance or personal injury to others, his capacity is that of a trustee rather than an executor. In such case the question of liability of the trust estate hardly falls within the scope of this work. Thus, he is liable as an individual only for personal injury to a tenant from defective premises, of which he has taken control for the heirs. Donahue *v.* Kendall, 50 N. Y. Super. Ct. 386.

Diligence and devastavit. Good faith and diligence are required of executors and administrators in all the business of their office, Hanscom *v.* Marston, 82 Me. 288; the diligence being that which a prudent man would exercise under like circumstances. Spaulding *v.* Wakefield, 53 Vt. 660. The want of such diligence generally amounts to a devastavit. Even the provisions of the will cannot relieve them from this liability. Estate of Richardson, 12 Phila. 32. But the particular diligence required may depend in a measure on the express directions of the will, the orders of the court, or the requirements of the statute. And if there is a will, it is his duty to sustain the probate against attack. John *v.* Tate, 7 Humph. 388. Liability for devastavit attaches at the date of the representative's qualification, Leach *v.* Jones, 86 N. C. 404; McAfee *v.* McAfee, 28 S. C. 188; and is governed by the law in force at that time, Syme *v.* Badger, 96 N. C. 197; although the form of the remedy may be according to a statute passed after letters granted. Potter *v.* Ogden, 136 N. Y. 384. It will be barred by the statute running from the date of the devastavit, Taylor *v.* Robinson, 69 Ala.

269; or in case of the death of the representative, from the time the action accrued against his representatives. Syme *v.* Badger, *ubi supra.*

Mismanagement not amounting to a devastavit is often ground for the removal of the executor, Estate of Silberman, 16 Phila. 317; and see Vol. I. p. 704, *et seq.* But such removal does not discharge any liability already incurred. And if he has converted property of the estate, he may be required to account for it after he has resigned his office. Matter of Radovich, 74 Cal. 536.

If successive bonds have been given with different sureties, the sureties at the time of the original conversion will be liable, although the assets might have been recovered during the term of the new bond given afterward, State *v.* Berning, 74 Mo. 87; although the sureties on the new bond will also be liable for the later default. Wolff *v.* Schaeffer, 74 Mo. 154. See too, Vol. I. p. 634; Perry *v.* Campbell, 10 W. Va. 228.

In some states suit may be brought for a devastavit without a previous accounting or settlement in the Probate Court. This is so, in Mississippi, in favor of a creditor, Clopton *v.* Haughton. 57 Miss. 787; but not of a distributee. Dobbins *v.* Halfacre, 52 Miss. 561. But in other states a preliminary order for payment in the Probate Court is necessary, and a settlement in that court cannot be collaterally attacked in an action for a devastavit. Tate *v.* Norton, 94 U. S. 746. And see, as to preliminary proceedings of the Probate Court in actions on administration bonds, Vol. I. p. 647, n.

Diligence must be exercised throughout the entire course of the representative's official duties, and he may be guilty of neglect or devastavit in his inventory or accounting, in collecting the assets, in managing and investing them, and in applying and distributing them.

First. Inventory—Account. In all of the United States the executor or administrator is required by statute to file an inventory of the assets of the estate. See Vol. II. p. 180, n. His neglect to do so constitutes a breach of his bond. See Vol. I. p. 640, n. And in some states the inventory should include even property which has been fraudulently conveyed by the deceased. Newcomb *v.* Wing, 3 Pick. 168; and see Vol. II. p. 182, n. For removal from office for default in his inventory, see Vol. I. p. 704, n.

He will be liable for property inventoried and afterward lost by his neglect, Tuttle *v.* Robinson, 33 N. H. 104; but not for property lost without fault of his, *e. g.*, by theft, Carpenter *v.* Carpenter, 12 R. I. 544; or war, Lea *v.* Beaman, 101 N. C. 294; or inventoried by his predecessor and never found by him. Matter of O'Brien, 42 Hun 284.

The duty of the personal representative to present and settle his accounts is considered in a later part of this chapter. See American note, p. *1759.

Second. Collection of assets. The duty of collecting the assets precedes that of paying debts. Estate of France, 17 Phila. 485.

If the executor makes no effort to collect good claims due to the estate, he will be liable for their loss. Estate of Moore, Tuck. 41; Charlton's Appeal, 134 Pa. St. 473; Munden *v.* Bailey, 70 Ala. 63. So, if he fails to use ordinary diligence in the collection of such debts, Holcomb *v.* Coryell, 3 Stockt. 476; Hall *v.* Carter, 8 Ga. 388; especially if he knew that the debtor was in failing circumstances. Waterman *v.* Alden, 144 Ill. 90, revg. 42 Ill. Ap. 294. He will be liable if he could have collected the debt by reasonable diligence and failed to do so. Estate of Long, 6 Watts 46; Succession of Coco, 32

La. An. 325; Sanderson *v.* Sanderson, 20 Fla. 294; Matter of Haffey, 10 Mo. Ap. 232. And the fact that the debtor has afterward become insolvent will not relieve him from the effect of his own negligence. Cooley *v.* Van Syckle, 1 McCart. 496. But the debtor's insolvency will not render him liable where there was no previous negligence on his part. Dean *v.* Rathbone, 15 Ala. 328. Even where a note is destroyed by fire, if it could have been collected as a lost note, he will be liable for his negligence. Williams *v.* Cubage, 36 Ark. 307. And an executor's duty in collecting claims involves, in the case of a bill or note, due presentment for payment, White *v.* Stoddard, 11 Gray 258; as well as protest and notice of protest, Rand *v.* Hubbard, 4 Met. 252, where necessary. In like manner it is his duty to see that claims belonging to the estate are duly presented against the estate of an insolvent debtor, Wilson *v.* Staats, 6 Stew. (N. J.) 524; or to the executor of a deceased debtor.

Liability for collection. The executor or administrator is liable for the collection of assets within a reasonable time. Moffat *v.* Loughridge, 51 Miss. 211. It has been held to be negligent to leave them uncollected for two years, Scarborough *v.* Watkins, 9 B. Mon. 540; or three years, Cooley *v.* Van Syckle, 1 McCart. 496; although the widow and devisee of the deceased had given the debtor time indefinitely. Shaffer's Appeal, 46 Pa. St. 131. On the other hand, even a delay in proceeding on a note until the maker's death may not render the executor liable where he believed the maker to be wealthy and the note had been taken by the deceased. Southall *v.* Taylor, 14 Gratt. 269.

Where claims are lost by the negligence of the personal representative, the measure of damages (in the absence of fraud) is the actual value, Harris *v.* Parker, 41 Ala. 604; or, in the absence of other evidence, the amount due on them, Gates *v.* Whetstone, 8 S. C. 244; including both principal and interest, Smyley *v.* Reese, 53 Ala. 89; Banks *v.* Macken, 40 Miss. 256; or the interest will be reckoned at the rate expressed in the note, if any. Strong *v.* Wilkson, 14 Mo. 116.

So, a personal representative will be liable for collateral lost through his neglect, Willis *v.* Willis, 16 Ala. 652; *e. g.*, for his neglect to sell under a trust deed (although the premises afterward depreciated in value). Booker *v.* Armstrong, 93 Mo. 49. And he may be liable for failure to collect the interest on a collateral mortgage, even though he might not have been able to collect the principal. Whitin *v.* Paul, 13 R. I. 40.

But he will not be liable for a sudden collapse in the value of collateral without negligence on his part, Watkins *v.* Stewart, 78 Va. 111; especially where he has been diligent in collecting part of the amount and taking additional security for the balance, Nelson *v.* Page, 7 Gratt. 160; or has taken and collected what he could from the debtor and afterward lost the collections through the default of the decedent's brother, whom he had employed to collect them, Dabney's Appeal, 120 Pa. St. 344; or although the fresh security prudently taken by him, as it seemed, required additional advances which were in part lost by the ultimate insufficiency of the security. Torrence *v.* Davidson, 92 N. C. 437.

Proof of negligence. The burden of proof is on the administrator claiming to be discharged from liability for uncollectable claims which he has inventoried. Cunningham *v.* Cauthen, 37 S. C. 123; Gates *v.* Whetstone, 8 S. C. 244; Julian *v.* Abbott, 73 Mo. 580; Tell City Furniture Co. *v.* Stiles, 60 Miss. 849; whether inventoried as desperate, Hun-

tingdon *v.* Spears, 3 Ired. 450; or not so inventoried. Estate of Sanderson, 74 Cal. 199; Brazeale *v.* Brazeale, 9 Ala. 491. And if the debts were incurred by the executor, he must show prudence in making them, as well as diligence in trying to collect them. Moore *v.* Beauchamp, 4 B. Mon. 71. But see, *contra*, Estate of Ritter, 11 Phila. 12; Smith *v.* Hurd, 16 Miss. 682; Groves *v.* Williams, 68 Ga. 598; Adkins *v.* Hutchings, 79 Ga. 260. And if he alleges that he has paid a creditor, who denies the payment, he must prove it. Johnson *v.* Maples, 49 Ill. 101. But a judgment against the executor individually is not admissible as evidence of a devastavit in his representative capacity, Van Horn *v.* Teasdale, 4 Halst. 379; although his personal interest in the non-collection of a debt is a circumstance tending to show his negligence. Patterson *v.* Wadsworth, 89 N. C. 407; Torrence *v.* Davidson, 92 N. C. 437.

What debts must be collected. The duty of prompt collection applies, in general, to all debts due to the deceased. Thus, the personal representative is liable for allowing moneys of the deceased to remain in the hands of a commission merchant until lost by his failure. Succession of Stone, 31 La. An. 311. So, for not protecting the estate of the decedent as surety by proceeding against the principal debtor, Tuggle *v.* Gilbert, 1 Duval 340; especially where the administrator is himself the creditor, Jones *v.* Graham, 36 Ark. 383; or for not collecting moneys due to the deceased as a partner in settlement of the firm accounts, Hellmann *v.* Wellenkamp, 71 Mo. 407; or in collecting from the estate of the partner previously deceased, Brandon *v.* Judah, 7 Ind. 545; or in collecting debts due to the deceased from the estate of a deceased debtor (the inventory of the other estate being sufficient evidence of assets known to his own representative). Thompson *v.* Thompson, 77 Ga. 692. So, he is liable for negligence in failing to collect the balance due from the preceding administrator. Grant *v.* Reese, 94 N. C. 720.

As to his right to take proceedings against his predecessor or the estate of his predecessor, see Vol. II. p. 161, n. In such proceedings, as in others, his duty toward creditors and distributees is commensurate with his authority. And he may even be charged with the devastavit of his predecessor for his failure in this respect. Eubank *v.* Clark, 78 Ala. 73. See also Vol. II. pp. 112, n., 113, n., *ubi supra*, as to the successor's liability for the devastavit of his predecessor.

Where successive administrators are liable for a continuing devastavit by failure to collect debts, their liability is said to be in the inverse order of their appointment. Lary *v.* Stamper, 27 Gratt. 42.

An executor must collect money due the estate from himself as promptly as from any other debtor, Warner *v.* Knower, 3 Dem. 208; and must account for his own debt, Gardner *v.* Gardner, 7 Paige 112; and stand charged with it in his first account, Riegel's Appeal, 106 Pa. St. 437; as so much money, Baucus *v.* Stover, 89 N. Y. 1; although he had previously given a void usurious note for it. Matter of Consalus, 95 N. Y. 340. His inventory of such debt is *prima facie* evidence of its collection. Hickman *v.* Kamp, 3 Bush 205. And see, as to inventory of such debts, Vol. II. p. 182, n.; and as to their character as assets, Vol. II. pp. 624, n., 627 n., and Vol. III. p. 132, n., *ubi supra*. His sureties are chargeable for its collection as for the collection of other debts, and not otherwise, Rader *v.* Yeargin, 85 Tenn. 486; and are not sureties for the payment of the debt at all events. Spurlock *v.* Earles, 8 Baxt.

437. And see Vol. III. p. 133, n., *ubi supra.*

If the administrator has charged himself with the debt as paid at various times, he may be held to such account, or may be charged with it as collected when he qualified as administrator. Koon *v.* Munro, 11 S. C. 139. But he cannot be relieved from liability by reason of his insolvency where he had been previously solvent after he qualified, and then claimed discharge from the debt by reason of fictitious payments claimed to have been made on it. Condit *v.* Winslow, 106 Ind. 142. If he has deposited as collateral security with the papers of the estate a policy of insurance on his life, with a memorandum that it was so intended, it will be held to belong to the estate without formal transfer. Falk *v.* Jones, 5 Dick. (N. J.) 468, revg. 4 Id. 484.

In like manner an executor or administrator must account for the debt of his firm to the estate as so much money in his hand, Matter of Consalus, 95 N. Y. 340; Tarbell *v.* Jewett, 129 Mass. 457; although the firm was already insolvent. Leland *v.* Felton, 1 Allen 531.

Rents—Foreign debts. Where the personal representative is entitled to collect the rents, he is chargeable with them if collected, Waterman *v.* Alden, 42 Ill. Ap. 204; and for neglect in not collecting them, Jennings *v.* Copeland, 90 N. C. 572; if he neglects to use ordinary diligence, Estate of Moore, 96 Cal. 522; and not for the tenant's insolvency, if he is without fault. Coffee *v.* Ruffin, 4 Coldw. 487.

An administrator or executor is liable for negligence in not collecting even foreign debts where he might readily have done so, Williams *v.* Williams, 79 N. C. 417; especially where process might have been served on the foreign debtor within the jurisdiction, Schultz *v.* Pulver, 11 Wend. 361; S. C. 3 Paige 182; or where he has incurred the loss by his own act in extending the debt and suffering other creditors to get ahead of him. Matter of Millard, 2 Connoly 91. And if he incurs personal expenses in going out of the state to collect a debt in another jurisdiction, a reasonable charge will be allowed in his account. Huson *v.* Wallace, 1 Rich. Eq. 1. But a personal representative is not liable for the foreign assets where there is a foreign administrator. Grant *v.* Reese, 94 N. C. 720. And his sureties will not be liable for foreign assets received by him. Cabanne *v.* Skinner, 56 Mo. 357. But an ancillary administrator is liable for diligent collection of debts in his own jurisdiction. State *v.* Gregory, 88 Ind. 110. And see, as to foreign assets, Vol. II. p. 182, n., *ubi supra.*

Negligence or default of agent. An administrator is liable where he allows moneys of the estate to be lost by suffering them to remain for years in the hands of the attorney who collected them, Abercrombie *v.* Skinner, 42 Ala. 633, or where a draft is lost by the fraud of a stranger to whom he negligently intrusted it for collection, Davis *v.* Chapman, 83 Va. 67; or where the loss is by the negligence of an attorney in a distant state whom he had improvidently selected, McCloskey *v.* Gleason, 58 Vt. 264; or where the administrator has employed an agent who was notoriously incompetent for the work, such as a layman to conduct legal proceedings, Wakeman *v.* Hazelton, 3 Barb. Ch. 148; or where he has neglected for many years to call the agent to account for the moneys collected, Marshall *v.* Moore, 2 T. B. Mon. 69; or for his neglect to collect them. Mills *v.* Talley, 83 Va. 361.

But his liability for the default of his agent will be barred like other liabilities, Raynor *v.* Pearsall, 3 Johns. Ch. 578; as well as the liability for his own default. Harrington *v.* Keteltas, 92 N. Y.

40. And he will not be liable for loss through an agent in a foreign jurisdiction whom he has carefully selected to make collection of debts there, Estate of Taylor, 52 Cal. 477; Deberry *v.* Ivey, 2 Jones Eq. 370; Christie *v.* McBride, 2 Ill. 75; nor for the mismanagement and insolvency of counsel originally employed by the testator and retained with ordinary diligence by the executor, Estate of Calhoun, 6 Watts 185; nor for his failure to press a claim against an insolvent debtor under the advice of counsel whom the will had directed him to consult, Bowen *v.* Montgomery, 48 Ala. 353; although the executor will not be controlled in the choice of necessary counsel even by the express direction of the will. Young *v.* Alexander, 16 Lea 108.

Excuse for delay or loss. An executor is not chargeable with his estimate of what may probably be collected, Fauber *v.* Gentry, 89 Va. 312; nor with any claim not actually received, unless it is lost by his negligence. Tompkins *v.* Tompkins, 18 S. C. 1; Deas *v.* Spann, 1 Harp. Ch. 176; Smith *v.* Hurd, 16 Miss. 682; Hooper *v.* Hooper, 32 W. Va. 526. And this applies to current interest on a note as well as to the principal. Estate of Moore, 96 Cal. 522. The retention of interest-bearing debts and securities for the sake of income will be considered hereafter. And he is not liable for not collecting interest on a testamentary valuation charged on a devise and bequeathed as residue (the principal having been paid from time to time at the executor's request pending the settlement of the estate). Ashley *v.* Barrell, 48 Vt. 488. So, an executor is not responsible for the collection of debts which are practically uncollectible, Waterman *v.* Alden, 144 Ill. 90, revg. 42 Ill. Ap. 294; Powell *v.* Hurt, 108 Mo. 507; especially where there is a valid defense claimed, Waterman *v.* Alden, *ubi supra;* Estate of Stow, Myrick's Prob. 97; such as a set-off, Bowen *v.* Montgomery, 48 Ala. 353; or the bar of the Statute of Limitations, Patterson *v.* Wadsworth, 89 N. C. 407; and where the party complaining of the negligence had the notes representing the debt under his own control, Gay *v.* Grant, 105 N. C. 478; and received the interest and directed the matter himself for a number of years, Shurtleff *v.* Ferry, 138 Mass. 259; or where the collection was prevented by the outbreak and continuance of the war. Lary *v.* Stamper, 27 Gratt. 42.

And the personal representative has been excused from liability for loss of a claim, where he believed in good faith and after due inquiry that the claim had been transferred by the deceased to another person, Holmes *v.* Bridgman, 37 Vt. 28; or that it belonged to the executor himself, Syme *v.* Badger, 92 N. C. 706; or was inventoried as valueless and collection not attempted on the advice of testator's bookkeeper. Gillespie *v.* Brooks, 2 Redf. 349. So, an executor has been excused for not collecting a note on account of the unwillingness of the life tenant to have it sued upon, Orr *v.* Orr, 34 S. C. 275; or because of an extension by the distributees. Perry *v.* Wooten, 5 Humph. 524. And a legatee whose legacy is paid has, of course, no standing to question the conduct of the executor in failing to collect assets. State *v.* Adams, 71 Mo. 620. But it is no excuse that the testator himself would probably not have pressed the claim, Waterman *v.* Alden, 144 Ill. 90; or that the debtor was an intimate friend. Wilson *v.* Lineberger, 88 N. C. 416.

Collection—In money—property. It is the duty of the executor to collect claims of the estate in money. This, of course, includes United States legal tender notes. Jackson *v.* Chase, 98 Mass. 286. But he cannot, in general, take property in settlement of a claim.

Means *v.* Harrison, 114 Ill. 248. And if he takes a bill of exchange from the debtor, the latter will not be discharged from the debt by the executor's failure to give due notice of dishonor to the drawer of the bill, Parham *v.* Stith, 56 Miss. 465; nor will a note so taken discharge the surety on the original debt, although the will directed that the debtor should not be pressed. Nash *v.* Heilman, 14 Fed. Rep. 88. So, it is a devastavit to receive his own notes in payment of a judgment recovered by him as executor, Grant *v.* Bell, 90 N. C. 558; or to take land in payment of debts due the estate, Weir *v.* Tate, 4 Ired. Eq. 264; although he may become liable for neglecting to take such property where there is no prospect of recovery in any other manner. Whitney *v.* Peddicord, 63 Ill. 249. Where he takes land for a debt he holds it as trustee for the estate, Mabary *v.* Dollarhide, 98 Mo. 198; and should not sell it, it has been held, without direction of the court. Foscue *v.* Lyon, 55 Ala. 440. But, as in other cases of negligence, consenting creditors are estopped from objection, and distributees cannot object, if no other course would make a surplus for them. Clark *v.* Eubank, 80 Ala. 584.

Payment in depreciated currency. The cases on receipt of Confederate currency are too conflicting to be of much value in establishing any rule. And the courts were in many states controlled by local statutes. Of the very numerous cases only a few are cited as tending to throw some light on a condition of things that is not likely to recur.

Thus, it has been held that the personal representative is liable to creditors for collecting the debts in illegal and worthless funds, Oglesby *v.* Howard, 43 Ala. 144; Trammell *v.* Philleo, 33 Tex. 395; Succession of Lagarde, 20 La. An. 148; especially where the currency was furnished by himself in payment of notes held by the estate (the liability being measured by the value of the currency as then scaled), Depriest *v.* Patterson, 92 N. C. 402; or in payment of a debt of his co-executor to the estate, Covington *v.* Lattimore, 88 N. C. 407; or of his own firm, Wilson *v.* Powell, 75 N. C. 468; or in payment of secured debts. Helsley *v.* Craig, 33 Gratt. 716; Lipse *v.* Spear, 4 Hughes 535.

But an executor has been held not to be liable if he has received the currency in good faith and reasonable diligence while it was still the circulating medium, Anderson *v.* Wynn, 62 Ala. 329; Key *v.* Jones, 52 Ala. 238; Van Hoose *v.* Bush, 54 Ala. 342; the burden being on him to show his good faith. Brandon *v.* Rowe, 58 Ga. 536. The receipt of such currency was expressly authorized by statute in some states. Harris *v.* Parker, 41 Ala. 604; Campbell *v.* Miller, 38 Ga. 304. He might receive such currency in good faith even before the debt was due. Douglass *v.* Stephenson, 75 Va. 747. And even on the maturity of a note made by himself to the testator, he was held chargeable only with its amount in such currency at its then value. Chick *v.* Farr, 31 S. C. 463. And he could not be charged with a devastavit for receiving such currency even at the end of the war in payment of a note belonging to the estate, without proof of the validity and value of the note. Cummings *v.* Bradley, 57 Ala. 224. But if he received it conditionally and did not return it in accordance with the condition, he would be liable for its then value, Siron *v.* Ruleman, 32 Gratt. 215; and the debtor also will remain liable to the estate, McBurney *v.* Carson, 99 U. S. 567; Helsley *v.* Fultz, 76 Va. 671. So, as to both debtor and executor, although the currency was received by the executor under misrepresentation and duress not involving personal dan-

ger of which the debtor was cognizant, Patteson *v.* Bondurant, 30 Gratt. 94; but otherwise, as to the executor, where the refusal to accept such currency would have put him in great bodily peril. Rockhold *v.* Blevins, 6 Baxt. 115. So, if he received such currency and converted it to his own use, he was charged with its value at the time of the conversion. Glenn *v.* Glenn, 41 Ala. 571; Morris *v.* Morris, 9 Heisk. 814.

If he received such currency he should apply it so far as practicable to the payment of debts and expenses. Rogers *v.* Tullos, 51 Miss. 685. And if he received such currency without authority, and failed to apply it, he would be charged with what remained on his hands. Williams *v.* Campbell, 46 Miss. 57. Where, however, he was authorized or required by statute to receive it, he should be credited with what remained on his hands worthless at the end of the war, Foscue *v.* Lyon, 55 Ala. 440; Harris *v.* Parker, 41 Ala. 604; Jones *v.* Graham, 36 Ark. 383; Tompkins *v.* Tompkins, 18 S. C. 1; if not mingled with his own funds, Key *v.* Jones, 52 Ala. 238; or converted by him, Morris *v.* Morris, 9 Heisk. 814; especially where he was directed by the will to hold it for a legatee who could not be reached, and where there was no opportunity for investment, Morris *v.* Morris, 58 Ala. 443; but not where he had mingled it with his own funds. McCook *v.* Harp, 81 Ga. 229. And an executor has been held not to be liable if he has received such currency and paid debts and expenses of the estate with it, Koon *v.* Munro, 11 S. C. 139; Brabham *v.* Crosland, 25 S. C. 525; Wimbish *v.* Rawlins, 76 Ga. 48; and if disbursed by him without scaling, he will be charged with it at its face value. Currie *v.* McNeil, 83 N. C. 176; Drake *v.* Drake, 82 N. C. 443; Wimbish *v.* Rawlins, *ubi supra;* Depriest *v.* Patterson, 94 N. C. 519; Hix *v.* Hix, 25 W. Va. 481. So too, if he received and paid out depreciated banknotes at par, Gaunt *v.* Tucker, 18 Ala. 27; or advanced Confederate currency of his own to pay off debts of the estate at its par value. Surber *v.* Kent, 5 W. Va. 96. Such currency has been held to extinguish the debt when voluntarily received by a creditor of the estate, Waring *v.* Lewis, 53 Ala. 615; Ferguson *v.* Morris, 67 Ala. 389; or when paid by a debtor of the estate and received by distributees at their own request, Glasgow *v.* Lipse, 117 U. S. 327; or generally to satisfy a distributive share when received in payment by a distributee. Boyd *v.* Townes, 79 Va. 118. If the administrator received Confederate currency which was legally applicable to the payment of debts, he must apply it in payment of a debt to himself. Dickie *v.* Dickie, 80 Ala. 7. But if he had applied it on other debts, only the balance remaining would be chargeable against his own claim. Crawford *v.* Crawford, 17 S. C. 521.

An executor or administrator cannot receive Confederate currency in payment on a sale of property of the estate, either real, Tosh *v.* Robertson, 27 Gratt. 270; Bedinger *v.* Wharton, Id. 857; or personal, Succession of Sproul, 21 La. An. 544; Pitts *v.* Singleton, 44 Ala. 363; although such sale may be valid as to purchasers. Van Hoose *v.* Bush, 54 Ala. 342. He will be liable if he has received such currency unnecessarily and mingled it with his own funds, Raines *v.* Raines, 51 Ala. 237; but not if he has applied the currency received in payment of the debts, Cummings *v.* Bradley, 57 Ala. 224; or of legacies. Lingle *v.* Cook, 32 Gratt. 262. And see, as to sales made under urgent circumstances, Whitley *v.* Alexander, 73 Me. 444. See also Vol. II. p. 135, n., *ubi supra.*

Collection by suit. Personal representatives have authority to collect by suit. Brannock *v.* Stocker, 76 Ind. 573.

And where there is in the will an express direction to collect speedily and diligently, no discretion is left to them as to doing so. Powell *v.* Hurt, 31 Mo. Ap. 632. An administrator will be liable for not suing a foreign debtor when he comes into the jurisdiction. Klein *v.* French, 57 Miss. 662. If he pays the debt of his decedent as surety for another, he must prosecute the principal debtor, Matter of Saltus, 3 Abb. App. Dec. 243; and will be liable for failure to do so. Chambers' Appeal, 11 Pa. St. 436. If a chose in action is lost by his negligence in bringing suit, he will be liable for its value, Jennings *v.* Weeks, Rice 453; Sherrell *v.* Shepard, 19 Fla. 300; especially where he knew the debtor to be in failing circumstances. Anderson *v.* Piercy, 20 W. Va. 282. And he is not estopped from suing at law on a claim by having obtained a decree in equity against the debtor setting aside a conveyance of land in fraud of the estate. Perrill *v.* Nichols, 89 Ind. 444. He should file a bill in equity to set aside a fraudulent transfer of property by his decedent. Koons *v.* Koons, 6 Kulp 317. And it is his duty also to sue for a trespass in taking personal property of the estate, Gray *v.* Swain, 2 Hawks 15; or for withholding assets of the estate, Holmes *v.* Bridgman, 37 Vt. 28; in which case he will be liable, although he has taken indemnity for suing.

In like manner he will be liable for negligence in defending against actions brought against the estate. Eubank *v.* Clark, 78 Ala. 73; Reynolds *v.* Zink, 27 Gratt. 29; Thayer *v.* Hollis, 3 Met. 369. But he will not be liable to heirs who have assumed the defense of a suit themselves. Meyeringh *v.* Wendt, 86 Ia. 465.

Excuse for delay. A reasonable delay in bringing suit is not a devastavit if there is no special cause for haste, James *v.* Wingo, 7 Lea 148; Morris *v.* Morris, 9 Heisk. 814; even where the administrator has taken part payment on a bond already overdue (there being no reason to suspect the insolvency of the obligor). Keeler's Appeal, 8 Pa. St. 288. So, the executor will not be held liable for delay in suing a son-in-law of the testator who would have been ruined by the suit, Neff's Appeal, 57 Pa. St. 91; or for not suing him promptly for the price of property purchased where two of the legatees were sureties for him, Mickle *v.* Brown, 4 Baxt. 468; or, under the advice of counsel, for not suing for bonds claimed adversely by a niece of the testator. O'Conner *v.* Gifford, 117 N. Y. 275. And a settlement of his accounts will, in general, bar any liability for negligence to bring a suit for land claimed adversely. Reynolds *v.* Brumagim, 54 Cal. 254. So, he will not be held liable in the absence of neglect, and of reason to know of any fraud, for his failure to take proceedings to set aside a fraudulent conveyance, Conwill *v.* Livingston, 61 Miss. 641; nor for his failure to sue the principal debtors after payment of a debt on which the deceased was surety, where one of the principals was insolvent and the liability of the other was questioned, Williams *v.* Maitland, 1 Ired. Eq. 92; nor for taking security from the representative of a deceased co-executor for funds converted by him where that was the best course under the circumstances, Ormiston *v.* Olcott, 84 N. Y. 339, revg. 22 Hun 270; nor for failure to sue the widow for property converted by her amounting to less than her legal exemption, Jenks *v.* Terrell, 73 Ala. 238; nor, in general, for failure to sue where suit would be unavailing, O'Conner *v.* Gifford, 117 N. Y. 275; Smith *v.* Collamer, 2 Dem. 147; Patterson *v.* Wadsworth, 89 N. C. 407; Mitchell *v.* Trotter, 7 Gratt. 136; Estate of Berry, 14 Lea 408; or where the claim itself was doubtful, Higginson *v.* Second National Bank, 59 Hun 183;

unless properly indemnified, Hepburn *v.* Hepburn, 2 Bradf. 74; Sanborn *v.* Goodhue, 28 N. H. 48; although he should sue, if sufficiently indemnified. Griswold *v.* Chandler, 5 N. H. 492. *A fortiori*, he is not liable for not suing where the action was prevented by the war, Tanner *v.* Bennett, 33 Gratt. 251; or by an injunction, Fauber *v.* Gentry, 89 Va. 312; or in the case of an administrator by his discovery of a will which would supersede his own letters. Hartsfield *v.* Allen, 7 Jones 439.

Compromise of claims. An executor may, in general, compromise claims belonging to the estate, Woolfork *v.* Sullivan, 23 Ala. 548; especially if inventoried as worthless. Gillespie *v.* Brooks, 2 Redf. 349. Thus, he may compromise with one holding assets of the estate, Kee *v.* Kee, 2 Gratt. 116; or with the surviving partners of the deceased. Colton *v.* Stanford, 82 Cal. 351.

And he may make a compromise in opposition to the wish of the residuary legatees, Rogers *v.* Hand, 12 Stew (N. J.) 270; or of some of them. Murray *v.* Blatchford, 1 Wend. 583. And no objection can be afterward made by distributees who have assented to the compromise, Estate of Engs, 32 N. Y. S. R. 1063; and received the proceeds of it. Delabigarre *v.* Second Municipality, 3 La. An. 230.

But there must be a reason for the compromise, such as the insolvency of the debtor or the doubtful character of the claim, Goods of Patten, Tuck. 56; and the compromise must be for the benefit of the estate, as well as made in good faith, Wyman's Appeal, 13 N. H. 18; Pusey *v.* Clemson, 9 Serg. & R. 204; although it need not be advantageous in every particular. Whitted *v.* Webb, 2 Dev. & B. Eq. 442. If it appears to be for the advantage of the estate, an executor may release a judgment levy for a sufficient undertaking to pay half of it, Mosman *v.* Bender, 80 Mo. 579; or may give up a joint note and take part payment from one maker and a new note from the other, Jacobs *v.* Jacobs, 99 Mo. 427; or may release part of the mortgaged premises on payment of part of the mortgage, Treadwell *v.* Brooks, 50 Conn. 262; or take back the mortgaged premises and charge himself with the property as personalty, Barclay *v.* Cooper, 15 Stew. (N. J.) 516; or compromise a doubtful suit, Alexander *v.* Kelso, 3 Baxt. 311; Meeker *v.* Vanderveer, 3 Green (N. J.) 392; or, under special circumstances, compromise for Confederate currency. Turpin *v.* Chesterfield Coal &c. Co., 82 Va. 74.

In many states provision is made by statute for compromise of claims with the approbation of the probate judge or court. These statutes, however, are generally held not to restrict the common-law right of the executor or administrator, Chouteau *v.* Suydam, 21 N. Y. 179; Moulton *v.* Holmes, 57 Cal. 337; Chase *v.* Bradley, 26 Me. 531; Wilks *v.* Slaughter, 49 Ark. 235; although, in Kansas, there is no authority to make any compromise without leave of the court. Ætna Life Insurance Co. *v.* Swayze, 30 Kan. 118. But an executor cannot buy off a contestant of the will, Bolles *v.* Bacon, 3 Dem. 43; and the statute does not apply to a compromise with a solvent debtor, Howell *v.* Blodgett, 1 Redf. 323; unless the claim is otherwise doubtful, Shepard *v.* Saltus, 4 Redf. 232; as where there is a defense against a claim for work done that it was not done within the contract time, Estate of Berrien, 18 Abb. Pr. N. S. 23; nor does it authorize a long extension by a compromise deed without part payment or new security. Matter of Loper, 2 Redf. 545.

Extension and release. In like manner a personal representative may give

an extension to a debtor, Berry *v.* Parkes, 11 Miss. 625; North *v.* Walker, 66 Mo. 453; if for the interest of the estate. Scott *v.* Atchison, 36 Tex. 76. So, he may release debts in whole or part where it is not improvident to do so, Waring *v.* Lewis, 53 Ala. 615; and where there is a sufficient consideration. De Diemar *v.* Van Wagenen, 7 Johns. 404. And if he afterward claims that the consideration was illegal, the burden is on him to show that it was so. Davenport *v.* First Congregational Society, 33 Wis. 387.

On the other hand, he cannot unnecessarily reduce the rate of interest payable to a legatee for life on a current investment, Wyckoff *v.* Wyckoff, 17 Stew. (N. J.) 56; nor surrender a bond with surety for a bond of the same obligor without a surety, Camp *v.* Smith, 68 M. C. 537; nor renew a note specifically bequeathed and hold the renewal until the maker becomes insolvent. Davis *v.* Crandall, 101 N.Y. 311.

Arbitration. At common law the executor or administrator might submit a dispute to arbitration so as to make the award binding on the estate, Strodes *v.* Patten, 1 Brock. 228; Bean *v.* Farnam, 6 Pick. 269; Kendall *v.* Bates, 35 Me. 357; Alling *v.* Munson, 2 Conn. 691; Childs *v.* Opdyke, 9 O. St. 333; Peters' Appeal, 28 Pa. St. 239; Wheatley *v.* Martin, 6 Leigh 62; Barker *v.* Belknap, 39 Vt. 168; although made in his individual name, Bennett *v.* Pierce, 28 Conn. 315; or made in due form and signed as an individual. Dickey *v.* Sleeper, 13 Mass. 244; Chadbourne *v.* Chadbourne, 9 Allen 173 (under the statute). But in some states it is held that the personal representative has no authority to arbitrate a claim against the estate. Yarborough *v.* Leggett, 14 Tex. 677; Reitzell *v.* Miller, 25 Ill. 67. And an executor is liable for loss to the estate incurred by an improvident arbitration. Nelson *v.* Cornwell, 11 Gratt. 724. And even where arbitration is expressly authorized by the statute, the award may be impeached in equity for fraud, but cannot be assailed for error in law or fact. Overly *v.* Overly, 1 Met. (Ky.) 117. See also Vol. II. p. 252, n., *ubi supra.*

In some states the statute provides for judicial reference of disputed claims to one or more referees or arbitrators. This is so, in New York, 2 R. S. 88, § 36; Russell *v.* Lane, 1 Barb. 519; Tracy *v.* Suydam, 30 Barb. 110; Bucklin *v.* Chapin, 53 Barb. 488; and embraces both legal and equitable claims, White *v.* Story, 43 Barb. 124; as well as for torts of the deceased, Brockett *v.* Bush, 18 Abb. Pr. 337; but not the liability of the estate of the deceased executor himself, Sands *v.* Craft, 10 Abb. Pr. 216; nor an account of moneys furnished by the executor to the widow for her support. Godding *v.* Porter, 17 Abb. Pr. 374. And an arbitration by agreement is not such a reference, Akely *v.* Akely, 17 How. Pr. 21; nor can the reference be made under a statute providing for voluntary arbitration. Anderson *v.* Baker, 15 O. St. 173. For other statutes, see Regan *v.* Stone, 15 Miss. 104; Green *v.* Creighton, Id. 197; Gilmore *v.* Hubbard, 12 Cush. 220; Bacon *v.* Crandon, 15 Pick. 79; McDaniels *v.* McDaniels, 40 Vt. 340.

Deposit of funds. It is the general duty of the personal representative to deposit funds in his hands in a bank or trust company. This is also the duty of a special administrator, Harrington *v.* Libby, 6 Daly 259; and of the public administrator, Lockland *v.* Public Administrator, 4 Bradf. 21; but the court may direct him to invest the fund. Id. In New York, the surrogate may direct the deposit of funds in a trust company, where the executors disagree as to investment and are of doubtful responsibility. Matter of Gilman, 41

Hun 561. But where an order for deposit is made by consent of parties, it will not be enforced by a proceeding for contempt. Guion *v.* Underhill, 1 Dem. 302.

But the failure to deposit funds in a bank will not render the executor or administrator liable (if he has been guilty of no negligence) for their loss by fire, Montgomery *v.* Coldwell, 14 Lea 29; or theft, Stevens *v.* Gage, 55 N. H. 175; State *v.* Meagher, 44 Mo. 356; Fudge *v.* Durn, 51 Mo. 264; Furman *v.* Coe, 1 Cai Cas. 96; but it is otherwise in case of negligence, Cornwell *v.* Deck, 8 Hun 122; Tarver *v.* Torrance, 81 Ga. 261. And he cannot set up after an unreasonable lapse of time that the money was stolen. Black *v.* Hurlbut, 73 Wis. 126.

Failure of bank. Where an executor deposits current receipts with ordinary care even with a private banker, he will not be liable for the loss incurred by the banker's failure, Barney *v.* Saunders, 16 How. 535; especially where the deposit bears interest. Crane *v.* Moses, 13 S. C. 561. But he will be liable for the loss of capital so deposited, Barney *v.* Saunders, *ubi supra;* such as proceeds of sales of property, Harlow *v.* Mills, 58 Hun 391; or of any considerable sum, although deposited by the advice of counsel. Baer's Appeal, 127 Pa. St. 360. But he will not be liable for such loss of money deposited to await the termination of proceedings as to its application. Twitty *v.* Houser, 7 S. C. 153. So, of income deposited pending contest of the will, Guthrie *v.* Wheeler, 51 Conn. 207; or pending the appointment of an administrator for a deceased distributee, Jacobus *v.* Jacobus, 10 Stew. (N. J.) 17; Cox *v.* Roome, 11 Id. 259; or while awaiting opportunity for investment according to the direction of the will. Matter of Maxwell, 1 Connoly 230. But he will be liable where the money was left on deposit for a long time after it should have been invested, Matter of Knight, 21 Abb. N. C. 388; or distributed, McNabb *v.* Wixom, 7 Nev. 163; or applied to the payment of debts (for which he had used his own funds), Guthrie *v.* Wheeler, 51 Conn. 207; or where no steps were taken for many years to settle the estate. Wood *v.* Myrick, 17 Minn. 408.

Without negligence he will not be liable for the loss of a deposit made by the testator and retained by him, McCabe *v.* Fowler, 84 N. Y. 314; Hanbest's Appeal, 92 Pa. St. 482; Norwood *v.* Harness, 98 Ind. 134. And this is true of the public administrator even where the statute requires him to make a special deposit of "moneys by him collected." Sheerin *v.* Public Administrator, 2 Redf. 421.

But an administrator is liable for the loss of a deposit made by him in a bank in another state and needlessly left there for a long time, Woodley *v.* Holley, 111 N. C. 380; but not where it was there in the lifetime of the decedent, and is being paid out as rapidly as possible, Moore *v.* Eure, 101 N. C. 11; nor where the will expressly directed that it should be left in a bank in France where he had deposited it. Denegre *v.* Denegre, 33 La. An. 694.

Liability for interest. The personal representative must account for all interest received on a deposit of funds of the estate, Sanderson *v.* Sanderson, 20 Fla. 292; and may even be liable for the legal rate of interest on funds improvidently deposited at a lower rate, Matter of Meikle, 20 N. Y. Supp. 88; or left on deposit without interest, Matter of Mapes, 5 Dem. 446; Gilman *v.* Gilman, 2 Lans. 1; Bohde *v.* Bruner, 2 Redf. 333. But not where the deposit was made under the direction of a referee and by consent of opposing counsel. Young *v.* Brush, 38 Barb. 294. He

will be liable for interest if he has used the funds himself while they were not called for. Nettles *v.* McCown, 5 S. C. 43. And where he failed to deposit the fund as directed by the will in a savings bank, he will be charged with interest at the rate paid by the bank, compounded semi-annually. Shepard *v.* Patterson, 3 Dem. 183. But he is not necessarily chargeable with interest lost by withdrawing a deposit from a savings bank before it was actually required. Estate of McQueen, 44 Cal. 584.

Mingling deposits. In general, where an executor or administrator deposits the funds of the estate in his individual name, he is liable for loss by failure of the bank, Baskin *v.* Baskin, 4 Lans. 90; Matter of Arguello, 97 Cal. 196; although he had no funds of his own in the same bank, Summers *v.* Reynolds, 95 N. C. 404; and also informed the officers of the bank that the moneys were trust funds, Williams *v.* Williams, 55 Wis. 300; but not where the deposit was entered in his individual name by a mistake of the bank officers. Atterberry *v.* McDuffee, 31 Mo. Ap. 603.

If he mingles the funds of the estate with his own, he will be liable to all parties interested. Case *v.* Abeel, 1 Paige 393; Rorke *v.* McConville, 4 Redf. 291; Prescott *v.* Morse, 62 Me. 447. See too, Cox *v.* Wills, 4 Dick. (N. J.) 130.

In such case he will be liable for all losses as for a conversion, Case *v.* Abeel, 1 Paige 393; Henderson *v.* Henderson, 58 Ala. 582; as well as for interest (although none is received), Union Bank *v.* Smith, 4 Cranch C. C. 509; Trust Co. *v.* Bixby, 2 Dem. 494; or for the interest which a trust company would have paid, Livermore *v.* Wortman, 25 Hun 341; unless he has used the funds, in which case he will be charged with all profits received exceeding the legal interest. Norris' Appeal, 71 Pa. St. 106. And if he has mingled the funds in deposit he must bear all loss caused by failure of the bank. Ditmar *v.* Bogle, 53 Ala. 169. But such a deposit does not of itself amount to a devastavit. Kirby *v.* State, 51 Md. 383; State *v.* Cheston, Id. 352. So, if he deposits the funds with a bank of which he is the president, he will be charged with legal interest, Matter of Babcock, 2 Connoly 82; or if he deposits them with his own firm, Cannon *v.* Apperson, 14 Lea 553; Matter of Mairs, 4 Redf. 160. But see Clock *v.* Chadeayne, 10 Hun 97.

Loaning of funds. If the personal representative loans the funds of the estate without authority, he will be liable for their loss. Estate of Lacoste, Myrick's Prob. 67; Wadsworth *v.* Connell, 104 Ill. 369; Walls *v.* Grigsby, 42 Ala. 473; Waring *v.* Lewis, 53 Ala. 615. So too, in the case of an executor without directions in the will to authorize the loan. Johnson *v.* Maples, 49 Ill. 101. And where the statute provides for loans by an administrator by leave of the Probate Court, he must obtain the leave before he makes the loan, and the court cannot afterward confirm his unauthorized loans. Gray *v.* Fox, Saxt. (N. J.) 259. Loans by an administrator are no excuse for delay or failure in paying debts, State *v.* Johnson, 7 Blackf. 529; or legacies. Dortch *v.* Dortch, 71 N. C. 224. But if he has made the loan with due prudence, he will not be liable for the interest on it unless it is lost by his own negligence. Moore *v.* Moore, 72 Cal. 335. If he loans notes belonging to the estate, he will be liable, although the maker is shown to be insolvent, unless he shows that the money could not have been collected by the utmost diligence. Cason *v.* Cason, 31 Miss. 578.

Unsecured loans. It is negligence to lend the funds of the estate on mere personal security or unsecured notes, Vreeland *v.* Schoonmaker, 1 C. E. Gr. 512; Lefevre *v.* Hasbrouck, 2 Dem.

567; Probate Judge *v.* Mathes, 60 N. H. 433; Moore *v.* Hamilton, 4 Fla. 112; or the note of a church corporation, Lacey *v.* Davis, 4 Redf. 402; especially if so loaned in disregard of the express directions of the will as to the kind of investment, Brewster *v.* Demarest, 3 Dick. (N. J.) 559; Pope *v.* Mathews, 18 S. C. 444; the executor being held in such case for interest at the legal rate, although he received less. Bohde *v.* Bruner, 2 Redf. 333. And such a loan is not authorized by a direction to invest "in such suitable manner as may be for the best interest of my estate to be determined by my executor," Matter of Cant, 5 Dem. 269; nor is his liability discharged when the note is turned over to his successor. Will of Foster, 15 Hun 387. So, to lend on the security of a policy of life insurance. Sherman *v.* Lanier, 12 Stew. (N. J.) 249. On the other hand, a loan made on second mortgage in pursuance of the testator's promise, and of his verbal instructions to the executor, will not render the executor personally liable. Corle *v.* Monkhouse, 5 Dick. (N. J.) 537.

But a loan may be made to a beneficiary of the will on the security of his interest (in remainder after a life estate). Delafield *v.* Schuchardt, 2 Dem. 435. In North Carolina, an executor is not responsible for a loan made on the unsecured note of one who was believed to be solvent, Nelson *v.* Hall, 5 Jones Eq. 32; or on the note of the husband of a beneficiary on the strength of his wife's interest. Moye *v.* Petivay, 76 N. C. 327.

Loans to executor. An executor will be liable for the highest rate of interest, where he loans the funds of the estate to himself, McKenzie *v.* Anderson, 2 Woods 357; or to his father. Halsted *v.* Hyman, 3 Bradf. 426. He may be charged with compound interest on a loan made to his own firm, Hannahs *v.* Hannahs, 68 N. Y. 610; or to his co-executor. Perrine *v.* Petty, 7 Stew. (N. J.) 193. So, he will be charged with the full value of securities of the estate fraudulently used by himself as collateral in his own business, Ward *v.* Tinkham, 65 Mich. 695; McElroy *v.* Thompson, 42 Ala. 656; Miller *v.* Miller, 73 Md. 443; or in the business of his firm, Chiffet *v.* Willis, 74 Tex. 245; or loaned to the firm of his co-executor, Matter of Myers, 131 N. Y. 409; Wilmerding *v.* McKesson, 103 N. Y. 329. And the property may be recovered from the executor's pledgee. Moore *v.* American Loan &c. Co., 115 N. Y. 65. But if the executor has loaned the moneys to his own firm, and afterward withdrawn more than sufficient for their repayment (which was never so applied, but was so accounted for, and appropriated, between the partners), the firm will be discharged from its liability to the distributees. Sherburne *v.* Goodwin, 44 N. H. 275. But if not withdrawn, the firm will be liable in an action brought by a legatee, although the other partners did not know of the use of the funds in their business. Colt *v.* Lanier, 9 Cow. 320.

If an executor mingles the funds of the estate with his own, and loans them out together without keeping separate accounts, he will be chargeable with interest. Kellett *v.* Rathbun, 4 Paige 102. But if so loaned without fault or imprudence, he will only be charged with simple and legal interest, Perkins *v.* Hollister, 59 Vt. 348; or with the lower rate of interest actually received by him. Grange's Appeal, 50 Pa. St. 189.

On the other hand, usury reserved to himself by way of bonus in making loans of the funds of the estate is a good defense to a foreclosure of the mortgage taken by him for the estate. O'Neil *v.* Cleveland, 3 Stew. (N. J.) 273. And he cannot, of course, enforce the agree-

ment for the bonus. Landis *v.* Saxton, 89 Mo. 375. Neither is it the duty of an executor to borrow money at a usurious rate, even for the protection of the estate from foreclosure sale, Matter of Holladay, 18 Or. 168; although usury actually paid by him for that purpose may be allowed him on accounting. Coffee *v.* Ruffin, 4 Coldw. 487.

Investment of funds. The duty of the trustee of a continuing trust as to making the fund productive by investment differs generally from that of a mere executor or administrator. Jennings *v.* Davis, 5 Dana 127. Where the executor is a trustee, his administrator will not succeed to his powers or liabilities as such without being so appointed, and will not be required to invest the trust funds coming to his hands. Knight *v.* Loomis, 30 Me. 209. Until the time for settlement of the estate it is generally the duty of the administrator to keep the funds uninvested. Chase *v.* Lockerman, 11 Gill & J. 185. So too, where he is an ancillary administrator and liable to be ordered to pay over the moneys in hand to the administrator of the domicil. Matter of Black, 6 Dem. 331. But where distribution is delayed, it is the duty of the executor or administrator to invest the funds, Estate of Evans, 11 Phila. 113; as in the case of there being no one qualified to receive the share of a distributee. Dortch *v.* Dortch, 71 N. C. 224. Such investment should be made within a reasonable time, Frey *v.* Frey, 2 C. E. Gr. 71; *e. g.*, after six months, Voorhees *v.* Stoothoff, 6 Halst. 145; Nunn *v.* Nunn, 66 Ala. 35; or at the end of each year. Matter of Butler, 1 Connoly 58. If land is sold subject to a mortgage, and the purchase money held without investment by the executor and without payment of the mortgage, the mortgage will be treated as paid at the time of sale, and the estate not charged with further interest on it. Matter of Babcock, 2 Connoly 82. As to interest charged against executors for retaining funds without investment, see p. *1759, n., *ubi infra*. But it has even been held that the executors may show that they accepted the office on a parol agreement with the testator that the fund (payable to a legatee at the age of twenty-one) should not be invested nor interest charged against them. Chestnut *v.* Strong, 1 Hill. Ch. 122.

And even if the time and choice of particular investments is by the will made discretionary with the executors, the court will control their discretion, where they fail for a long time to invest the funds by reason of their disagreement. Holcomb *v.* Holcomb, 2 Beas. 413; S. C. 3 Stockt. 281. A discretion as to rate of investment left to the executor as an agent of the testator in his lifetime will cease at his death and leave the executor chargeable with legal interest on his indebtedness to the estate. Warner *v.* Knower, 3 Dem. 208. But he may be relieved by the will from liability for imprudent investments, where there is no willful misconduct. Crabb *v.* Young, 92 N. Y. 57. And under a direction to keep the funds invested, he may unite two distinct trust funds in one desirable investment. Barry *v.* Lambert, 98 N. Y. 300.

And on the other hand, the directions of the will must generally be followed as to the character of investments to be made, and the executor will be liable for loss by failure to obey them, Ward *v.* Kitchen, 3 Stew. (N. J.) 31; Brewster *v.* Demarest, 3 Dick. (N. J.) 559; and action will lie on his bond for such failure. Hall *v.* Cushing, 9 Pick. 395. So, if he is directed to invest the proceeds of property for the use of A. for life, with remainder over, and the fund is lost by being paid over

to the guardian of A., who became insolvent, the executor will be liable. Peacock *v.* Harris, 85 N. C. 146. And a bequest of money for the use of testator's daughter, "or to be invested in land for her," with remainder to her heirs, gives the executor no discretionary authority to pay the money over to the life tenant. McFarland *v.* McKay, 74 N. C. 258.

But an administrator cannot keep the funds of the estate idle to prevent an attachment, Matter of Bradley, 1 Connoly 106; nor because of threatened and expected litigation, Doster *v.* Arnold, 60 Ga. 816; nor because of a distributee's delay for many years to demand her distributive share, Nettles *v.* McCown, 5 S. C. 43; nor because it was for the interest of the residuary legatee, that the fund should not be invested. Fowler *v.* Colt, 10 C. E. Gr. 202. But where investment is rendered impossible by war then pending, the failure to invest will be sufficiently excused. Brent *v.* Clevinger, 78 Va. 12; Brant *v.* Abbott, 42 Ala. 499. So, the condition of the country at the time of the testator's death after the war will excuse the executor from obeying the directions of the will (made some years before the war) to invest in Virginia state bonds. Perry *v.* Smoot, 23 Gratt. 241.

Investments of decedent. Where the executor or administrator retains the investments of the decedent in the exercise of good faith and reasonable discretion, he is not ordinarily held accountable for loss by failure of the investment. Coddington *v.* Stone, 9 Stew. (N. J.) 362; Bowker *v.* Pierce, 130 Mass. 262; Foscue *v.* Lyon, 55 Ala. 440; Troup *v.* Rice, 55 Miss. 278; Stewart's Appeal, 110 Pa. St. 410; Estate of Williamson, 12 Phila. 64; S. C. 13 Id. 195; Peckham *v.* Newton, 15 R. I. 321; Watkins *v.* Stewart, 78 Va. 111. He may even, for the sake of the accruing income, continue to hold a bond which the obligor offers to pay off. McNair's Appeal, 4 Rawle 147. And where executors are expressly authorized by the will to do so, they may retain investments of the testator, Green *v.* Green, 3 Stew. (N. J.) 451; S. C. 5 Id. 768; Matter of Wolfe, 1 Connoly 102; but this does not apply to the purchase of new shares of stock issued by way of privilege to former stockholders. Lacey *v.* Davis, 4 Redf. 402. They should not, however, retain securities of an improper character for investment, Adams *v.* Van Vleck, 4 Dem. 343; and should, in case of evident danger, dispose even of stocks specifically bequeathed. Ward *v.* Kitchen, 3 Stew. (N. J.) 31. In such cases the Probate Court may interfere and direct the sale of the stocks. Judd *v.* Warner, 2 Dem. 104. But where there is no proof of danger, the court will not, in general, require a sale, but will leave an objector to his remedy by application for removal of the representative or for additional security, Adams *v.* Van Vleck, 4 Dem. 348; although even a direction to retain specific securities may be controlled by a court of equity in case of their depreciation and distribution of the securities themselves ordered. Manning *v.* Craig, 3 Gr. Ch. 436. If stocks are retained and lost in private speculations of the executor, he will, of course, be chargeable. Estate of Ruckstuhl, 17 Phila. 441. But mere depreciation is not, in general, sufficient to charge him without proof of negligence on his part. McRae *v.* McRae, 3 Bradf. 199.

In New Jersey, executors and administrators are expressly authorized by statute to retain investments of the deceased in the exercise of good faith and reasonable discretion, and in the absence of particular direction as to investment on the part of the testator (act of 1881, Rev. Supp. 780); and a

general direction to convert the residuary estate into money and hold in trust for the life of the beneficiary is not sufficient to constitute the exception provided for in the statute. Parker *v.* Glover, 15 Stew. (N. J.) 559. Where, however, the executor was directed to invest a trust fund in some safe investment, it was held (before this statute) that he could not retain investments of the testator for that purpose at their nominal value. Halsted *v.* Meeker, 3 C. E. Gr. 136. But they might be set apart for the purpose at their actual market value. Grinnell *v.* Baker, 17 R. I. 41.

Character of investment—United States bonds. In the absence of statutory or testamentary direction as to proper subjects of investment the rule varies in different states. In all of the United States government bonds may be purchased for that purpose. King *v.* Talbot, 40 N. Y. 76; Wheeler *v.* Perry, 18 N. H. 307; and see 40 Am. Dec. 506, n. The executor will not be chargeable with the loss of premium when the bonds are paid off. Estate of Cridland, 132 Pa. St. 479; Valentine *v.* Valentine, 3 Dem. 597. A direction to invest in government bonds involves the payment of premiums in their purchase, Brown *v.* Chesterman, 30 N. Y. S. R. 537; and the executor must invest a sufficient amount to secure the principal designated. Wisner *v.* Kleinhaus, 69 Mich. 307. But a direction to purchase bonds is not satisfied by the payment of the money to a bank as agent for the purchase, and the executor will be liable for loss by failure of the bank without purchasing them. Key *v.* Hughes, 32 W. Va. 184.

Confederate bonds. There is some conflict of authority as to investments in Confederate bonds. To the effect that such investments are void, and that the executor is chargeable with the loss, see Horn *v.* Lockhart, 17 Wall. 570; Copeland *v.* McCue, 5 W. Va. 264; Williams *v.* Campbell, 46 Miss. 57; Finch *v.* Finch, 28 S. C. 164; Opie *v.* Castleman, 32 Fed. Rep. 511 (W. Va.); although made under an order of the Probate Court, Ferguson *v.* Epes, 77 Va. 499; Sharpe *v.* Rockwood, 78 Va. 24; Carter *v.* Dulaney, 30 Gratt. 194, in February, 1865; and by the authority of the statute (which was held to be void). Powell *v.* Boon, 43 Ala. 459; Houston *v.* Deloach, Id. 364; Crickard *v.* Crickard, 25 Gratt. 410. And an order approving such investment is not evidence of sufficient diligence on the part of the administrator. Davis *v.* Harper, 54 Ga. 180. And he is liable, *a fortiori*, where the money should have been used in payment of the debts of the estate. Frazier *v.* Frazier, 77 Va. 775.

On the other hand, such investments have been supported when made with ordinary prudence, and the executor held discharged from liability, in Koon *v.* Munro, 11 S. C. 139; Dockery *v.* McDowell, 40 Ala. 476; Waller *v.* Catlett, 83 Va. 200. So, where the fund invested was Confederate currency. Drake *v.* Drake, 82 N. C. 443; West *v.* Cauthen, 9 S. C. 45; Mills *v.* Mills, 28 Gratt. 442; Jones *v.* Jones, 86 Va. 848; Dickie *v.* Dickie, 80 Ala. 57.

In this class of cases the correct rule seems to be to leave the strict legality of the bonds (as a subject of investment) to be determined by the law in force at the time and place of the investment, and to let the executor's accountability rest, as in other cases, upon his want of prudence and diligence as questions of fact.

Mortgage investment. In making investment in mortgage securities the executor must use care in ascertaining the title and value of the land. Bogart *v.* Van Velsor, 4 Edw. Ch. 718. He may continue a mortgage investment of the testator with ordinary diligence (the non-payment of interest putting him to

further inquiry), Matter of Butler, 1 Connoly 58; under a direction to loan on bond and mortgage, Mills *v.* Smith, 19 N. Y. Supp. 854; or may buy a mortgage made by the testator. Hepburn *v.* Hepburn, 2 Bradf. 74. But if he is obliged to foreclose such mortgage held by the testator and lose on the sale, and the sale was managed and the property purchased by relations of his own, he must show that it was properly conducted, and that the value of the property was realized. McCully *v.* Lum, 4 Dick. (N. J.) 552. He may even make a loan on property held by himself affording ample security. Morgan *v.* Morgan, 3 Dem. 612. And receiving a bonus for the loan is not evidence of bad faith. Sherman *v.* Lanier, 12 Stew. (N. J.) 249. So he may lend on the individual title of one who holds the land as partnership property for his firm. Miller *v.* Proctor, 20 O. St. 442.

The margin of value in the land above the amount loaned should be ample. Loans have been held good to the amount of half of the value, Clark *v.* Anderson, 13 Bush 111; or even of three-fourths (on a farm). Wilson *v.* Staats, 6 Stew. (N. J.) 524. So, of one-third on unimproved city lots, Perrine *v.* Vreeland, 6 Stew. (N. J.) 102, affd. Id. 596; but not mortgages to the full value of the land, Matter of Blauvelt, 2 Connoly 458; Savage *v.* Gould, 60 How. Pr. 217; nor a mortgage on a church building, Garesche *v.* Priest, 9 Mo. App. 270; nor second mortgages, Earle *v.* Earle, 93 N. Y. 104; Matter of Petrie, 5 Dem. 352; Savage *v.* Gould, 60 How. Pr. 217; Matter of Blauvelt, 2 Connoly 458; Wilson *v.* Staats, 6 Stew. (N. J.) 524; Crane *v.* Howell, 8 Id. 374. In such case he cannot use the funds of the estate to pay off prior liens. Lacey *v.* Davis, 4 Redf. 402. But the rules as to proportionate value in investment do not govern purchase money mortgages taken back by the executor on sales of land. Denton *v.* Sanford, 103 N. Y. 607; Woodruff *v.* Lounsberry, 13 Stew. (N. J.) 545.

Purchase and improvement of land. An executor may be directed by the will to invest funds of the estate in the purchase of land, although it would be a devastavit in the absence of such direction. Richardson *v.* McLemore, 60 Miss. 315. His control and power over land purchased by direction of the will is the same as over land of which the testator died seized, and no greater. Hardee *v.* Cheatham, 52 Miss. 41. And if the direction is to build on certain property devised, the improvement will go to the devisee as land. Allen *v.* Stead, 38 Mich. 756. But, in general, an executor cannot purchase vacant lots or property available only for brickmaking. Holcomb *v.* Holcomb, 3 Stockt. 281; S. C. Id. 476. He may protect the estate by buying in property on which he has foreclosed a mortgage belonging to it, Id.; Meeker *v.* Straat, 38 Mo. Ap. 239; and may buy in the land in the name of the heirs. Hoover *v.* Malen, 83 Ind. 195. And, land bought in under a foreclosure will be personal property in his hands, Stevenson *v.* Poole, 71 Ia. 278. So, he may, in his own name, buy in property mortgaged by him to pay debts of the estate, Sojourner *v.* Fourney, 35 La. An. 918; or to raise funds for the maintenance of a church. Allan *v.* Gillet, 21 Fed. Rep. 273 (subject, however, to a resulting trust for the church).

A general direction to invest moneys is not satisfied by the erection of buildings on vacant land of the estate. Estate of Moore, 95 Cal. 34. And he cannot buy property in his own name, and expend moneys of the estate in making the improvements on it, and credit himself as executor with such moneys as paid to him as guardian of the children. Merket *v.* Smith, 33

Kan. 66. On the other hand, a specific testamentary direction, such as to build a church for a certain congregation, may be enforced by order of the court on his refusal. Appeal of Fidelity Co., 99 Pa. St. 443.

Miscellaneous investments. The following investments by an executor or administrator have been held to be sufficient: Railroad bonds, Brown *v.* French, 125 Mass. 410; stock in gas company, McCoy *v.* Horwitz, 62 Md. 183; stock in United States bank, Estate of Nyce, 5 Watts & S. 254; under authority to invest in "some safe and productive stock," Pleasant's Appeal, 77 Pa. St. 356; stock of manufacturing company and insurance company (under testamentary authority to invest in "bank shares or other stock according to their best judgment"). Harvard College *v.* Amory, 9 Pick. 446.

The following have been held to be insufficient: Railroad stock, King *v.* Talbot, 40 N. Y. 76; McKnight *v.* Walsh, 8 C. E. Gr. 136; under direction to invest in "such securities as to them shall seem advisable," Matter of Keteltas, 1 Connoly 468; especially in a wildcat railroad, under direction to invest in "some good, secure, and profitable stocks," Ihmsen's Appeal, 43 Pa. St. 431; railroad bonds (to protect stock improperly purchased), Lacey *v.* Davis, 4 Redf. 402; second mortgage railroad bonds, railroad stock, and bank stock (under direction to invest in "first-class interest-bearing securities"), Woodruff *v.* Ward, 8 Stew. (N. J.) 467; municipal bonds, Tucker *v.* Tucker, 6 Stew. (N. J.) 235; Woodruff *v.* Lounsberry, 13 Stew. (N. J.) 545; bank stock, Smith *v.* Combs, 4 Dick. (N. J.) 420; Tucker *v.* Tucker, 6 Stew. 235; Gilbert *v.* Welsh, 75 Ind. 557; and assessments on the stock paid by the executor on the failure of the bank will not be allowed to him, Mills *v.* Hoffman, 26 Hun 594; invalid water bonds, De Kay *v.* Hackensack Water Co., 11 Stew. (N. J.) 158; unsecured notes (under authority to invest "in such suitable manner as may be for the best interests of my estate, to be determined by my executor"). Matter of Cant, 5 Dem. 269.

Sale of personal property. The rule which requires the personal representative to act with ordinary diligence and prudence applies to sales of property of the estate as well as to the other duties of his office. The Probate Court will not, in general, advise him as to making such sales. Estate of Whitaker, 14 Phila. 254. Under a power to sell and reinvest he may dispose of depreciated stocks, although the will expresses a wish that they should not be sold below par unless thought necessary. Stephens *v.* Milnor, 9 C. E. Gr. 358. He may even exchange *bank stock* for convertible bonds as a step toward conversion into money, although a power of sale does not generally include power to exchange properties. Columbus Insurance & Banking Co. *v.* Humphries, 64 Miss. 258. But as to paying a mortgage on lands in which the administrator is interested as heir, with dividend-paying bank stock, see Mount *v.* Van Ness, 8 Stew. (N. J.) 113. If securities come to his hands for a continuing trust which are not proper for investment, he should dispose of them and invest the proceeds in authorized securities. Gillespie *v.* Brooks, 2 Redf. 349; Toronto General Trust Co. *v.* Chicago &c. Railroad Co., 64 Hun 1. And he will be liable for any loss that may accrue after an order of the court directing him to do so. Matter of McDonald, 4 Redf. 321.

He cannot purchase the assets of the estate from himself. See Vol. II. p. 138, n., *ubi supra.* If, on completing a contract of the decedent for the purchase of land, he takes the title in his

own name, he will be chargeable as trustee. Jones *v.* Slaughter, 96 N. C. 541. And if, as trustee, he makes an unauthorized sale of assets and afterward repurchases them, the *cestui que trust* may hold him liable for a devastavit, or may waive the breach of trust and hold the property. Oliver *v.* Piatt, 3 How. 333. And where an executor has transferred the testator's bank account to his individual name, and transferred to himself as executor worthless stock of the bank held by himself, the bank (of which he was president) will be charged with his knowledge and responsible for the fraud. Holden *v.* Bank, 72 N. Y. 286.

An executor is not liable for a mistake in judgment as to the time for selling depreciated securities, Cooper *v.* Cooper, 77 Va. 198; Weston *v.* Ward, 4 Redf. 415; Matter of Green, 10 Stew. (N. J.) 254; notwithstanding a general direction to sell, Matter of Gray, 27 Hun 455; nor for delay in selling peculiar property, such as an ostrich, until the proper season. Estate of Bosio, 2 Ashm. 437. As to authority to transfer and manner and terms of sale, see Vol. II. p. 132, n., *et seq. ubi supra.*

Sale of real property. Where the will gives a discretionary power of sale to the executor, it will not, in general, be controlled by the Probate Court. Estate of Peterson, 13 Phila. 265. But the Court of Chancery will itself execute or direct the execution of a discretionary power of sale on disagreement of co-executors, when the provisions of the will taken together amount to a trust in the executors. Story *v.* Palmer, 17 Stew. (N. J.) 1. And an executor will be held liable for loss arising from his failure to comply with the directions of the will as to sale of the land, Haight *v.* Brisbin, 100 N. Y. 219; and may be enjoined for disobeying the direction of the will, *e. g.*, from selling in one plot where the will directed that it should be sold off in lots of a certain size. Napier *v.* Napier, 89 Ga. 48. So, if land is devised subject to a charge for the maintenance of the widow and with a power of sale to the executor, it is his duty, if necessary, to enforce the charge against the devisee by sale of the land. Pettingill *v.* Pettingill, 60 Me. 411.

An executor should not, however, execute a power of sale if the land is held adversely, or the title is subject to a cloud, Estate of Ricaud, 57 Cal. 421; but in such case it is the duty of an executor (or, in Michigan, an administrator) to take proceedings to relieve the cloud. Marshall *v.* Blass, 82 Mich. 518. If the sale is to be made upon the consent of a third person, it may be exercised after his death if the intention of the testator is plain. Phillips *v.* Davies, 92 N. Y. 199. But if the request of a majority is required, and some are dead, a majority of the entire original number is still necessary. Crane *v.* Bolles, 4 Dick. (N. J.) 373. The right to sell a part upon the happening of a contingency does not authorize the sale of the whole, Walker *v.* Murphey, 34 Ala. 591; nor can a power of sale upon the happening of a certain contingency be exercised upon the happening of a different contingency. Snedekers *v.* Allen, 1 Pen. (N. J.) 32.

If the power is discretionary, the time of its exercise is to be determined by the executor, Haight *v.* Brisbin, 96 N. Y. 132; and see Dorland *v.* Dorland, 2 Barb. 63. As to reasonable time for sale, see also Matter of Weston, 91 N. Y. 502; Winship *v.* Rawlins, 76 Va. 48; such question being within the exclusive jurisdiction of the Probate Court. Erie Dime Sav. & Loan Co. *v.* Vincent, 105 Pa. St. 315. A power of sale should not be exercised before the time contemplated by the will; and if so exercised, the sale is void. Jones *v.* Morris, 61 Ala. 518; Massey *v.* Moda-

well, 73 Ala. 421. But where a sale is directed upon a certain contingency, which is sure to happen (death of the widow), the executor may sell before the happening of the contingency, if the beneficiaries consent. Snell *v.* Snell, 11 Stew. (N. J.) 119. And, on the other hand, he is not obliged to execute it immediately upon the happening of the event. Hancox *v.* Meeker, 95 N. Y. 528. Where the power is not to be exercised except in case of an imperative necessity, it cannot be exercised merely because it would be to the advantage of the estate to sell. Moale *v.* Cutting, 59 Md. 510. But where the intention is clear that a sale should be made, a limitation of time within which it is to be made is merely directory and a sale after such time valid, Waldron *v.* Schlang, 47 Hun 252; and may be compelled by a court of equity. Marsh *v.* Love, 15 Stew. (N. J.) 112. The execution of a power of sale may be accelerated by consent of the beneficiaries. Kilpatrick *v.* Barron, 125 N. Y. 751. But after a conveyance subject to the power of sale by a devisee who is entitled in case of a sale to the entire proceeds, the power is extinguished and can no longer be exercised, Hetzel *v.* Barber, 69 N. Y. 1; nor should it be exercised after the purposes for which it is given cease, Harvey *v.* Brisbin, 50 Hun 376; Sharpstein *v.* Tillou, 3 Cow. 651; Bruner *v.* Meigs, 64 N. Y. 506; or become unattainable, Bates *v.* Bates, 134 Mass. 111; Benedict *v.* Webb, 98 N. Y. 460; or have been otherwise satisfied. Swift's Appeal, 87 Pa. St. 502.

An executor or trustee is liable also for negligence in selling for an inadequate price, Huston *v.* Cassidy, 1 McCart. 320; Fisher *v.* Skillman, 3 C. E. Gr. 229; Leslie's Appeal, 63 Pa. St. 355; especially where he sells to his own sons. Estate of Corrington, 124 Ill. 363. But executors will not be liable for selling at an extremely depreciated price in the absence of negligence, although they may have previously refused a much larger offer. Dey *v.* Codman, 2 Dick. (N. J.) 540; Rolfe *v.* Van Sickle, 13 Stew. (N. J.) 158. And a sale will not be set aside for mere inadequacy of price without fraud. Kimball *v.* Lincoln, 99 Ill. 578.

Management of property. Where the care of the land is committed to the personal representative by the terms of the will or by statute (see p. 182, n., *ubi infra*), he is liable for negligence in renting the lands, James *v.* Faulk, 54 Ala. 184; May *v.* Kelly, 61 Ala. 489; or for obtaining too small a rent, Klein *v.* French, 57 Miss. 662; or for loss of the crops by negligence. Cooper *v.* Williams, 109 Ind. 270. But he is not chargeable with the rental, where he has been unable after due diligence to secure a proper tenant, Succession of Myrick, 38 La. An. 611; nor for failure to renew a lease, where the right was lost by the testator's breach of covenant. Fisher *v.* Fisher, 1 Bradf. 335.

He is also liable for allowing the land to be lost by his negligence in non-payment of taxes, Matter of Hartman, 73 Cal. 545; and for the costs of redeeming from such tax sale. Brackett *v.* Tillotson, 4 N. H. 208. So, too, for injuries to person or property due to the dangerous condition of premises held by him for the estate. Belvin *v.* French, 84 Va. 81; Boston Beef Packing Co. *v.* Stevens, 20 Blatch. 443. But where the balance of the land does not exceed the mortgage upon it, it is no negligence to suffer a foreclosure, although the land afterward increases greatly in value. Whitney *v.* Peddicord, 63 Ill. 249. So, he is under no obligation to insure property at excessive rates, Rubottom *v.* Morrow, 24 Ind. 202; or

to keep personal property insured which was never insured by the deceased, and which the legatees themselves requested should remain uninsured because of the high rates demanded for the insurance. Estate of Johnson, 11 Phila. 83. And he is not liable for the cost of a line fence, under the statute providing for line fences and for actions for neglect to build such a fence. Cummings *v.* Brock, 56 Vt. 308.

Payment of debts. An executor or administrator will be liable for a devastavit if he pays debts for which the estate in his hands is not liable, Stark *v.* Hunton, 2 Gr. Ch. 300; Walker *v.* Diehl, 79 Ill. 477; such as insurance and repairs of the realty, Cobb *v.* Muzzey, 13 Gray 58; Aldridge *v.* McClelland, 9 Stew. (N. J.) 288; although he may be credited for taxes paid on real estate in his hands in order to preserve it, Bowers *v.* Williams, 34 Miss. 324; and will be liable for paying valid claims prematurely and leaving himself without funds to pay necessary taxes, Schoeneich *v.* Reed, 8 Mo. Ap. 356; especially where he has notice that the claim is disputed. Egerton *v.* Egerton, 2 C. E. Gr. 419. If he pays claims before they are properly presented and allowed, he does so at his own risk, Adams *v.* Smith, 19 Nev. 259; Sims *v.* Sims, 30 Miss. 333; Haralson *v.* White, 38 Miss. 178; but if the claim has been allowed, the burden of proving that it was not a just debt is upon the exceptant, Matter of Frazer, 92 N. Y. 239; and he may pay debts before the time for presentment has expired, Millard *v.* Harris, 119 Ill. 185; or afterward, on a promise made before the time expired. Ames *v.* Jackson, 115 Mass. 508.

An administrator is not liable for negligence in paying claims which have been duly allowed, although the allowance was fraudulently obtained by the claimant, Dundas *v.* Chrisman, 25 Neb. 498; but it is otherwise if the allowance was by fraudulent collusion with the administrator, Garr *v.* Harding, 37 Mo. Ap. 24; or without proper allowance for a set-off, which was known to him. Dullard *v.* Hardy, 47 Mo. 403. In general, he is entitled to credit for claims paid in good faith after due allowance. Deck *v.* Gherke, 6 Cal. 666; Edelen *v.* Edelen, 11 Md. 415; Owens *v.* Collinson, 3 Gill & J. 25. He may even pay a bill of exchange on which the deceased was only liable as surety, and on which he was himself the principal debtor. Shelton *v.* Carpenter, 60 Ala. 201. But an administrator cannot pay a judgment rendered against himself and others as sureties for the deceased until after it has been actually paid by the sureties. Estate of Hill, 67 Cal. 238. And he cannot pay the notes of a corporation, of which the testator was the principal owner, for the benefit of a purchaser of such interest from the estate. Matter of Saltus, 3 Abb. App. Dec. 243. So, he cannot be credited for usurious debts paid, Smith *v.* Britton, 2 Patt. & H. 124; or for a lost note paid to the payee without presentment, after its transfer by him. Bank of Poughkeepsie *v.* Hasbrouck, 6 N. Y. 216. The next of kin cannot, however, object to the payment of an unitemized claim for services made with their consent. Kinnan *v.* Wight, 12 Stew. (N. J.) 501.

An executor may accept a claim against the estate as a gift to himself from a creditor, Buxton *v.* Barrett, 14 R. I. 40; and may transfer to another his own adverse claim to lands of the decedent. Wheeler *v.* Bolton, 92 Cal. 159. And he may retain for payment of his own debt a check received by him before testator's death as his general agent, although indorsed and cashed by him after the testator's death. Matter of Kellogg, 104 N. Y. 648. As to right of retainer, see Vol. II. p. 267, n., *ubi supra.*

Debts barred by the statute. It is not a devastavit to pay debts on which suit is barred by the Statute of Limitations, Pursel *v.* Pursel, 1 McCart. 514; Halliburton *v.* Carson, 100 N. C. 99; Byrd *v.* Wells, 40 Miss. 711; McDonald *v.* Barnes, 90 Ala. 147; and objection cannot be taken on appeal, if not made on the settlement of the account. Matter of Kellogg, 104 N. Y. 648. But a distinction is made, in Mississippi, between debts barred only at the time of payment and those which were barred at the time of the administrator's appointment, and credit is not allowed for payment of claims of the latter class. Trotter *v.* Trotter, 40 Miss. 704. And it has been held to be a devastavit to pay any claim that is barred, although the delay was occasioned by the executor's own request. Langham *v.* Baker, 5 Baxt. 701. If the administrator pays a debt that is barred, he must show that it was in fact still unpaid. Barnawell *v.* Smith, 5 Jones Eq. 168. After lapse of more than twenty years, however, the presumption will be in favor of the payment made by him. Browne *v.* Van Hook, 1 Redf. 444. And he will not be allowed credit for a book account held by himself which was barred by the statute. Pursel *v.* Pursel, 1 McCart. 514; Payne *v.* Pusey, 8 Bush 564; Batson *v.* Murrell, 10 Humph. 801; but see, *contra*, Semmes *v.* Young, 10 Md. 242. Where the executor is a surviving partner, and as such pays partnership debts at any time before settlement, he is entitled to be allowed for them, although paid after the time limited for actions against the executor. Forward *v.* Forward, 6 Allen 494.

Preference of debts and pro rata. It is the duty of the personal representative not only to pay the debts of the decedent, but to observe the order established by law for such payments. He must pay all claims of equal degree *pro rata.* People *v.* Phelps, 78 Ala. 147. And any creditor who is omitted will be entitled to recover his full *pro rata* share from the executor or administrator, Rice *v.* Hunt, 7 Lea 33; but not to payment in full, although other claims of the same class have been improperly paid in full. Pinneo *v.* Goodspeed, 120 Ill. 524. In the absence of a statute providing for proportionate payments he cannot, after bill in equity filed to enforce a claim, pay other claims of no higher dignity. Barnawell *v.* Smith, 5 Jones Eq. 168.

Payment of inferior debts before those of superior dignity is a devastavit, Swift *v.* Mills, 2 Rich. Eq. 147; Place *v.* Oldham, 10 B. Mon. 400; although made by mistake, Moye *v.* Albritton, 7 Ired. Eq. 62; and the administrator must account to his successor for such payments. Cobb *v.* Muzzey, 13 Gray 58. And action lies on his administration bond if inferior debts are first paid. State *v.* Brown, 80 Ind. 425. So, where the executor is himself surety for the testator, he cannot make a payment on such debt beyond its proportionate share without committing a devastavit. McCormick *v.* Wright, 79 Va. 524. He may, however, be relieved in equity where he had set apart a sufficient fund for the preferred debts, which was lost without fault of his before payment could be made. Hinton *v.* Kennedy, 3 S. C. 459. And he may, even after becoming aware of the insolvency of the estate, pay a debt due by way of assessment on stock to prevent a sacrifice of the stock, if there is a margin of value in the stock, as assets but not otherwise. Ripley *v.* Sampson, 10 Pick. 373. Debts of a preferred class are entitled to be paid in full if the original fund was sufficient and has been improvidently paid out among claims of inferior degree. Clifford *v.* Campbell, 65 Tex. 243. Before the present statutes an administrator might, however, pay inferior

debts if he did so in ignorance of the superior debt. Hatchcraft *v.* Tilford, 5 Dana 353.

Excessive payments. Where payment is made on claims against an insolvent estate in excess of their *pro rata* share, allowance will be made to the executor in his account only for the amount of such proportionate share. Pierce *v.* Allen, 12 R. I. 510; Lockhart *v.* White, 18 Tex. 102; Matter of Randall, 2 Connoly 29; Breckinridge's Appeal, 127 Pa. St. 81.

And in the absence of fraud he cannot recover from the creditor who received it the excess of such payment voluntarily made, Lawson *v.* Hansbrough, 10 B. Mon. 147; Foskett *v.* Wolf, 19 Ill. Ap. 33; especially after his sureties have been discharged by his delay in seeking such recovery, Brooking *v.* Farmers' Bank, 83 Ky. 431; although he may recover an overpayment on a special agreement made with the creditor to that effect. Beardsley *v.* Marsteller, 120 Ind. 319.

In Massachusetts, he may by statute recover such excess, if the payment was made within one year from public notice of his appointment, Heard *v.* Drake, 4 Gray 514; and see Walker *v.* Hill, 17 Mass. 380; Bliss *v.* Lee, 17 Pick. 83; but not if made after the year expired. Colegrove *v.* Robinson, 11 Met. 238. And the Statute of Limitations will, in any case, run in the creditor's favor from the time of payment to him. Richards *v.* Nightingale, 9 Allen 149.

Distribution before payment of debts. It is a devastavit to make distribution among legatees or next of kin before paying the debts of the decedent, Whitfield *v.* Woolf, 51 Ala. 202; Handley *v.* Hefflin, 84 Ala. 600: Johnson *v.* Fuquay, 1 Dana 514; Edmunds *v.* Scott, 78 Va. 729; Lewis *v.* Mason, 84 Va. 731; Fleece *v.* Jones, 71 Ind. 340; although the property delivered afterward became worthless, Morrison *v.* Lavell, 81 Va. 519; and such payment cannot be set up in defense against a creditor. North *v.* Priest, 81 Mo. 561; McKinder *v.* Littlejohn, 1 Ired. 66. But an executor will not be held personally liable for a contingent liability of the testator which became absolute after he had paid the legacies by order of the Probate Court and taken a sufficient refunding bond. Badger *v.* Daniel, 79 N. C. 372. A voluntary payment prematurely made to a legatee or distributee cannot be recovered back in an action at law, Matter of Hodgman, 140 N. Y. 421; Somervell *v.* Somervell, 3 Gill 276; although the contrary has been held under special circumstances at law, Clark *v.* Williams, 70 N. C. 679; and in equity. Trescott *v.* Trescott, 1 McCord Ch. 417. And a distributee is liable directly in an action by the creditor where he received such payment with knowledge that he was not entitled to it. Fleece *v.* Jones, 71 Ind. 340. So too, where he received the payment in good faith; but in such case only after the creditor's remedy is exhausted against the administrator and his sureties. Ledyard *v.* Johnson, 16 Ala. 548.

Distribution—How made. The executor or administrator must not only make distribution of the estate after settlement of the debts and expenses of administration, but must distribute the estate in accordance with the provisions of the law and of the will. If he pays the proper share to the party entitled, he is protected with or without an order for distribution, Donaldson *v.* Raborg, 28 Md. 34; and although the legatee might not have been able, as an unincorporated society, to sue for the legacy. Parker *v.* Howell, 16 N. H. 149. But a payment to the wrong party will not be made good by its allowance in his account. Defriez *v.* Coffin, 155 Mass. 203; Williams *v.* Cushing, 34 Me. 370. So, if the lega-

tee is dead, no payment can be made until a personal representative is appointed. Cox *v.* Roome, 6 Stew. (N. J.) 259. If the distributee is an infant, the payment must be shown to have been made to his guardian, Landreth *v.* Landreth, 9 Ala. 430; and not to his father unless he is the legal guardian. Johnson *v.* Johnson, 2 Hill Eq. 277; McKnight *v.* Walsh, 8 C. E. Gr. 136. And if the legacy is contingent on the legatee arriving at the age of twenty-one, and he dies before that time, a previous payment to his guardian will be insufficient, Cowdin *v.* Perry, 11 Pick. 503. So, it is a devastavit to pay moneys to a legatee in remainder, in disregard of the tenant for life, Dodd *v.* Winship, 144 Mass. 461; or to distribute the entire fund and omit some of the distributees who are entitled to it. Negley *v.* Gard, 20 Ohio 310. If such distribution was made by fraudulent representation of the administrator, the order of the Probate Court obtained by him will not protect him. O'Neill's Appeal, 55 Conn. 409. But if distribution was made in property and unavoidably unequal, with an agreement among the distributees for equalizing it, the administrator will not be liable. Sager *v.* Warley, Rich. Ch. 26. So, it is a devastavit to make distribution to the residuary legatee without retaining sufficient to satisfy pecuniary legacies payable at a future time, Stephenson *v.* Axson, 1 Bail. Eq. 274; or to pay over a government bond at its par value to a legatee without reckoning the premium or market value above par, Spaulding *v.* Wakefield, 53 Vt. 660; or to pay a legacy which has been barred by the lapse of twenty years. Hemphill *v.* Moody, 62 Ala. 510; Moody *v.* Hemphill, 71 Ala. 169.

If the legacy is on the performance of a condition, he must pay it when the condition is performed. Bohon *v.* Barrett, 79 Ky. 378. Where an erroneous payment is made, and the litigation over it is unreasonably protracted by the executor, he will be charged with interest on the amount from the time of payment. Van Houten *v.* Post, 5 Stew. (N. J.) 709. But creditors may be estopped by laches from objecting even to the payment of a void legacy. O'Conner *v.* Gifford, 117 N. Y. 275.

Where an order for distribution is made by the Probate Court, the executor or administrator is guilty of contempt of court on his failure to comply with it, Matter of Snyder, 34 Hun 302; and he will be charged with interest, if he fails to distribute promptly. Melone *v.* Davis, 67 Cal. 279; Moore *v.* Beauchamp, 4 B. Mon. 71; Carrol *v.* Connett, 2 J. J. Marsh. 195. He is not, however, under obligation to distribute the residue of the estate until an order of the court is made to that effect. Municipal Court *v.* Henry, 11 R. I. 563.

The executor is also responsible for the payment of the statutory allowance to the widow and children, Rhea *v.* Greer, 86 Tenn. 59; and will be allowed in his account for moneys applied to such allowance or to an allowance fixed by the Probate Court. Newell *v.* West, 149 Mass. 520. But he will be governed by the provisions of the will, Matter of Butler, 1 Connoly 58; and cannot apply the personalty to the maintenance of children which is charged on the real property, Covenhoven *v.* Covenhoven, Coxe (N. J.) 210; nor to payment of the widow's common-law dower. Stock *v.* Parker, 2 McCord Ch. 376.

If discretion is given to the children as to the payment of their shares, it will continue until fully exercised by them. Estate of Marshall, 147 Pa. St. 77. So, if discretion is given to the executors to increase an annuity out of the children's residuary estate, it may be

exercised after distribution of the rest of the estate. Elmer *v.* Gray, 73 Cal. 283. And after the death of an executor the discretion as to payment of a legacy vested in him may be exercised by the court. Pedrick *v.* Pedrick, 5 Dick. (N. J.) 479. And the Court of Chancery will assume the distribution of income among the testator's children where the discretion left with the trustee has been grossly abused, Babbitt *v.* Babbitt, 11 C. E. Gr. 44; but will not interfere with exercise of a discretionary power by the executor to make allowance for the maintenance of the children, except where he abuses the discretion given him. Read *v.* Patterson, 2 Dick. (N. J.) 595.

Misappropriation. It is a devastavit to dispose of assets of the estate without consideration, Krutz *v.* Stewart, 76 Ind. 9; or for the individual purposes of the personal representative, Rogers *v.* Zook, 86 Ind. 237; or to himself, Whitley *v.* Alexander, 73 N. C. 444; Clark *v.* Blackington, 110 Mass. 369; or his firm. Miller *v.* Williamson, 5 Md. 219. So, he must account for the proceeds of sales of land misappropriated by him, Minot *v.* Norcross, 143 Mass. 326; Austin *v.* Wilson, 21 Ind. 252; or for debts for which he has fraudulently procured receipts and allowance without payment. Shropshire *v.* Long, 68 Ia. 537.

But it is not a devastavit to take securities in his own name for debts due the estate in the absence of any fraudulent intent, Syme *v.* Badger, 92 N. C. 706; or to pledge notes belonging to the estate to his surety to secure advances to be made to the estate in excess of the notes (as well as for indemnity), Rogers *v.* Squires, 98 N. Y. 49; or to expend moneys of the estate in perfecting a claim to United States lands for the benefit of an insane heir, Dodge *v.* Cole, 97 Ill. 338; or to make an allotment to the widow, with the consent of legatees, to the amount of her supposed share, but really in excess of it, Colbert *v.* Daniel, 32 Ala. 314; or for the widow to dispose of the exempt property for the support of herself and her children, Brown *v.* Walker, 58 Ala. 310; or for an administrator to submit to the forcible sequestration by the Confederate Government of debts due to the estate. Miller *v.* Cook, 77 Va. 806.

In general, an executor who is guilty of a misappropriation of the assets of the estate will be charged with their highest market value, Irby *v.* Kitchell, 42 Ala. 438; and in Vermont, in case of embezzlement, with double their value, Spaulding *v.* Cook, 48 Vt. 145; and his surety will be liable for the value and interest less the amount of reasonable commissions which he would have earned, McKim *v.* Hibbard, 142 Mass. 422; but where the whole estate is bequeathed to the intestate's daughter for life, with remainder to her children, and the executor is her husband, he will not be held liable for interest on bonds converted with the wife's consent. Coddington *v.* Stone, 9 Stew. (N. J.) 361.

The property misappropriated may be followed into the hands of an assignee with notice, Rogers *v.* Zook, 86 Ind. 237; or of a pledgee having reasonable grounds for suspicion, Gottberg *v.* United States National Bank, 131 N. Y. 595; Randel *v.* Dyett, 38 Hun 347; although a *bona fide* purchaser will be protected. Brockenbrough *v.* Turner, 78 Va. 438. If other property is purchased with the misappropriated assets, the trustee may follow it. Pierce *v.* Holzer, 65 Mich. 264. But if a sufficient trust fund has been duly set aside, and afterward misappropriated by the executor, the *cestui que trust* cannot look to the residue to make his loss good. Mills *v.* Smith, 19 N. Y. Supp. 854.

Executor and trustee. The same person may be both executor and trustee

by express appointment in the will. In states where a bond is required from such trustee his refusal or failure to give bond is a renunciation of the trusteeship. Groton *v.* Ruggles, 17 Me. 137; Williams *v.* Cushing, 24 Me. 370; Shaw *v.* Paine, 12 Allen 297. So, if he gives bond as executor, and not as trustee. Deering *v.* Adams, 37 Me. 269. In such case he and his sureties will be liable on that bond, until bond is furnished as trustee or payment made to a new trustee. Newcomb *v.* Williams, 9 Met. 525; Prior *v.* Talbot, 10 Cush. 1. In New Jersey, where the executor is made a trustee, his acceptance of the latter office follows from the probate of the will. Schenck *v.* Schenck, 1 C. E. Gr. 174. Where the offices are distinct, the jurisdiction of the Probate Court will not extend to the administration and accounting of the trustee. Wheatley *v.* Badger, 7 Pa. St. 459. A trust is often given to the executor by implication from a direction to pay income to a legatee for life, with remainder over, Richardson *v.* Knight, 69 Me. 285; Nutter *v.* McVickery, 64 Me. 490; Dorr *v.* Wainwright, 13 Pick. 328; or to pay to a legatee on his arrival at the age of twenty-one years, Holbrook *v.* Harrington, 16 Gray 102; and the bond as executor covers the fund so held in trust. Dorr *v.* Wainwright, 13 Pick. 328. A special trust given to the executors survives to one who did not qualify as executor, and not to the administrator *de bonis non.* Clark *v.* Taintor, 7 Cush. 567. On the other hand, an executor renouncing as such and accepting the trust will retain a power of sale to the executors for the purposes of the trust after the appointment of an administrator *cum testamento annexo.* Clark *v.* Taintor, 7 Cush. 567.

Where an executor acts in a double capacity, it is his duty to keep separate accounts, Hedrick *v.* Tuckwiller, 20 W. Va. 489; Waterman *v.* Allen, 144 Ill. 90; Kee *v.* Kee, 2 Gratt. 116; and until he has accounted in the separate capacities no decree can be had against him for a default in either capacity. Findlay *v.* Trigg, 83 Va. 539. But where the executor was also guardian for the residuary legatee, his overpayment, as guardian, for maintenance of the infant may be reimbursed out of the funds held as executor, reducing that liability *pro tanto.* Mattoon *v.* Cowing, 13 Gray 387.

An executor cannot relieve himself from liability as such by a mental act transferring the fund to himself as trustee, Miller *v.* Congdon, 14 Gray 114; nor by the execution of a receipt as trustee to himself, United States *v.* Parker, 2 MacArth. 444; nor by a silent appropriation with no notice to the *cestui que trust* for a dozen years. Sheffield *v.* Parker, 158 Mass. 330. If the money is payable on a contingency, the executor's sureties will be liable until the contingency happens, Swope *v.* Chambers, 2 Gratt. 319; but it has been held that the fund in hand changes the character of the holder from administrator to guardian, after the lapse of the time for settling the estate as administrator. Carroll *v.* Bosley, 6 Yerg. 220; or after the debts are settled. Drane *v.* Bayliss, 1 Humph. 174. In general, however, an executor holds as such (and his bond remains liable accordingly) until his account as executor is settled. Hall *v.* Cushing, 9 Pick. 395; Conkey *v.* Dickinson, 13 Met. 53.

Where an executor credits and charges a payment to himself as trustee, it will be a payment as between himself and his *cestui qui trust.* Croker *v.* Dillon, 133 Mass. 91. See, too, as to distribution made to himself as guardian or executor of another distributee, Vol. II. page 847, n., *ubi supra.*

A *devastavit* by one of two executors or administrators shall not charge his companion (*a*), provided he has not in*tentionally or otherwise contributed to it:† For the testator's having misplaced his confidence in one shall not operate to the prejudice of the other (*b*).

In what case an executor is liable for the *devastavit* of his co-executor.

Hence, an executor shall not, under ordinary circumstances be responsible for the assets come to the hands of his co-executor (*c*). Hence, also, the circumstance that one of two executors had notice of the existence of a debt of superior degree, which he concealed from his co-executor, did not affect the latter, so as to make him guilty of a *devastavit* by paying an inferior debt (*d*); though, perhaps, if notice to one executor were proved, and nothing more appeared, it would have been presumed that he communicated it to his co-executor (*e*).

But where an executor, possessing assets of his testator hands over those assets to a co-executor, and they are misapplied by that co-executor, there the executor, who so hands them over, shall be answerable for their misapplication, unless he can show a good reason for having so acted (*f*).

*The rule may, perhaps, be stated to be, that where, by any act done by one executor, any part of the representative estate comes to the hands of his co-executor, the former will be answerable for the

(*a*) Wentw. Off. Ex. 306, 14th edit. Anon. Dyer, 210, *a*. Hargthorpe *v.* Millforth, Cro. Eliz. 318. Williams *v.* Nixon, 2 Beav. 472.

† See note 2, p.*1743 *ubi infra.*

(*b*) Cro. Eliz. 319.

(*c*) Cro. Eliz. 319. Littlehales *v.* Gascoyne, 3 Bro. Chanc. Cas. 74. Williams *v.* Nixon, 2 Beav. 472. Dix *v.* Burford, 19 Beav. 412. By Romilly, M.R. See *post*, p.*1861, as to a finding by a jury, upon a plea of *plene administravit* by several executors, that one only had assets. See also stat. 22 & 23 Vict. c. 35, s. 31, *post*, p.*1735.

(*d*) Hawkins *v.* Day, Ambl. 162.

(*e*) *Ib.* See Timson *v.* Ramsbottom, 2 Keen, 35. Smith *v.* Smith, 2 Cr. & M. 231. Meux *v.* Bell, 1 Hare, 73.

(*f*) Townsend *v.* Barber, Dick, 356. Macpherson *v.* Macpherson, 1 Macq. H. of L. 243. However, in the case of Davis *v.* Spurling, 1 Russ. & M. 66, an executor was employed by his co-executor as his agent to sell an estate which under the will of the testator, the co-executor alone had power to sell: The executor so employed handed over the price of the estate to the co-executor, who afterward misapplied it: And Sir John Leach, M.R., held, that although, by the will of the testator, the price of the estate, when sold, was to be considered as part of his personal estate, yet the executor, so handing it over, was not accountable for the misapplication of it; inasmuch as he had no legal right to retain it: for it was in his hands, not as executor, but simply as agent of his co-executor, who alone had power to sell the estate and to receive the price of it.

latter, in the same manner as he would have been for a stranger, whom he had intrusted to receive it (*g*).

But if an executor is merely passive, by not obstructing his co-executor from getting the assets into his possession, the former is not responsible (*h*). If, however, the one, in any way, contributes to enable the other to obtain possession, he is answerable, notwithstanding his motive be innocent, unless he can assign a sufficient excuse (*i*). Thus, in the case of several executors, if, by agreement among themselves, one is to receive and intermeddle with such part of the estate, and another with such a part, each of them will be chargeable for the whole; because the receipts of each are pursuant to the agreement made between them (*k*). So *where A., B., C., D., and E. (the two latter being married women) took out administration to an intestate, and afterward appointed C. to be the acting administrator, and directed the creditors to pay their debts to him: and C. became insolvent; it was held that A., B., and the husbands of D. and E., were responsible for C.'s receipts (*l*). So where a man made several executors, who all joined in the sale of the testator's goods, but one only received the money, and he became insolvent; it was holden that they should all be charged (*m*).

(*g*) See Mr. Cox's note to Churchill *v.* Hobson, 1 P. Wms. 241, and Lord Thurlow's judgment in Sadler *v.* Hobbs, 2 Bro. Chanc. Cas. 117. Accordingly in Home *v.* Pringle, 8 Cl. & F. 264, 268, the rule was stated to be that the appointment of one of several trustees to manage the property would not *per se* make the other trustees responsible for his acts; but it would make the trustee so appointed the agent of the other trustees for those purposes, and render them responsible for his acts, so far as they would have been responsible for the acts or receipts of a stranger. See also Toplis *v.* Hurrell, 19 Beav. 423, where the rule here stated was adopted by Romilly, M.R. See also Candler *v.* Tillett, 22 Beav. 263. Cowell *v.* Gatcombe, 27 Beav. 568. Ingle *v.* Partridge, 32 Beav. 661.

(*h*) Langford *v.* Gascoyne, 11 Ves. 335. Candler *v.* Tillett, 22 Beav. 257. This, it should seem, applies only to cases where the question arises under a decree for the common accounts, and not under a special charge against the executor for willful neglect and default: Terrell *v.* Mathew, 1 Mac. & G. 433, note (*a*). (See also the remarks of the reporters of that case, *ibid.*) He would clearly be liable if he stood by and saw his co-executor commit a breach of duty: See the cases cited *post*, p. *1735.

(*i*) Langford *v.* Gascoyne, 11 Ves. 335. Hewett *v.* Foster, 6 Beav. 259. Broadhurst *v.* Balguy, 1 Y. & Coll. Ch. C. 16. See also the cases collected in note (*g*).

(*k*) Gill *v.* Atty.-Gen., Hardr. 314.

(*l*) Lees *v.* Sanderson, 4 Sim. 28.

(*m*) Aplyn *v.* Brewer, Prec. Chan. 173. Burrows *v.* Walls, 5 De G. M. & G. 233.

[*1729]

Accordingly, an executor, having a fund standing in the joint names of himself and another, cannot, upon the mere representation of the co-executor, if false, be justified in doing an act that is an exercise of power over that fund: First, the act must be necessary for the purposes of the will, and then the person, to whom the representation is made, has imposed upon him at least ordinary and reasonable diligence to inquire whether the representation is true (*n*).

Also, if an executor has been dealing with the assets a considerable time, much beyond that period, in which, according to the ordinary course, the debts would be paid, and he applies to the other executor to have a fund put into his hands exclusively, and the other does inquire, and satisfies himself that there are debts unpaid, and the real purpose of the executor making the application, was to apply the fund to the discharge of debts; if it turns out afterward, that he had in his own hands a fund sufficient for the payment of those debts, and therefore the application of the other fund to that purpose was unnecessary, and that fund was not in fact devoted to the purpose for which it was provided, it would be impossible for the executor, who parted with it, to dis*charge himself: He would be subject to the imputation of negligence, as having been too easy with his co-executor; too remiss in not asking how he had been dealing with the assets in his hands (*o*).

Upon these principles, Lord Eldon held, in Shipbrook *v.* Lord Hinchinbrook (*p*), that where executors joined in a transfer of stock, vested in the name of all the executors, to a co-executor, upon his groundless representation that it was required for debts, the executors were answerable for the whole of the produce of the stock which they could not prove to have been applied by the co-executor to the payment of debts of the testator (*q*): But his lordship further held, that they were not liable so far as they could prove the application to that purpose, although he possessed other funds, part of the assets, not through them, which funds he wasted.

Again, in Langford *v.* Gascoyne (*r*), it appeared from the affidavit

(*n*) Shipbrook *v.* Lord Hinchinbrook, 11 Ves. 254. Hewett *v.* Foster, 6 Beav. 259. Broadhurst *v.* Balguy, 1 Y. & Coll. Ch. C. 16.

(*o*) Shipbrook *v.* Lord Hinchinbrook, 11 Ves. 254. See also Mendes *v.* Guedalla, 2 Johns. & H. 259.

(*p*) 11 Ves. 252. S. C. 16 Ves. 477.

(*q*) See also Chambers *v.* Minchin, 7 Ves. 186. Underwood *v.* Stevens, 1 Meriv. 713. Williams *v.* Nixon, 2 Beav. 472. Hewett *v.* Foster, 6 Beav. 259. Broadhurst *v.* Balguy, 1 Y. & Coll. Ch. C. 16.

(*r*) 11 Ves. 333.

[*1730]

of a witness, that on the day after the testator's funeral, his three executors, Gascoyne, Spurrell, and Lambert, met at his house, and his widow, being present, left the room to fetch a bag of money: Upon her return with it, she asked the witness to which of the executors she should deliver it; and the witness not then having a good opinion of Gascoyne's circumstances, advised her to give it to Spurrell; upon which she passed by Gascoyne and Lambert, who were sitting near the door, and gave the bag into the hands of Spurrell, who counted the money over, and then delivered it into the hands of Gascoyne: The witness further stated, that at that time Gascoyne was not reputed to be in good circumstances: And Sir Wm. Grant held, that the money must be considered to have been so far in the hands of Spurrell, that he was answerable for what after*ward became of it; but that as to the other executor, Lambert, it was impossible to charge him: for that he had neither done nor said anything that in any degree contributed to the loss of the money, or to its getting into the hands of Gascoyne: And his Honor observed, that it was not incumbent in one executor by force to prevent the money getting into the hands of another.

So in Moses *v.* Levi (*s*), a testatrix bequeathed the residue of her property to certain persons, some of whom lived in the west of England, and others in Norfolk, and she appointed two persons to be executors, one of whom lived at Clifton, and the other at Diss: The executors having paid all the debts and specific legacies of the testatrix, entered into an arrangement by which the Clifton executor was to pay the residuary legatees in the west of England, and the Diss executor those in Norfolk; and the residuary funds were apportioned between them for that purpose: The Diss executor made default in payment of one of the legatees in that neighborhood: And Alderson, B., held that the other executor was responsible for the default.

But if one executor places the property of the testator in the hands of the other, who happens to be a banker, or in such a situation that the act is not imprudent, the executor so depositing shall not be charged in case of a loss; for if he had been a sole executor, and had, under the same circumstances, placed the money in a banker's hands, he would not have been liable (*t*). So if an executor in the country

(*s*) 3 Younge & Coll. 359. See also Lewis *v.* Nobbs, 8 C. D. 591.

(*t*) Churchill *v.* Hobson, 1 P. Wms. 241. Chambers *v.* Minchin, 7 Ves. 198. See also Atty.-Gen. *v.* Randell, MS. Rep. 21 Vin. Abr. 534, tit. trust. (N. a.) pl. 9.

[*1731]

executes a power of attorney to a co-executor in town for the purpose of changing a fund of the testator, as the court would order it to be changed, as from the long annuities to three per cents., the act is justifiable, being for a purpose belonging to the administration of assets; but not to *change it to bank stock (*u*). So, in Bacon *v.* Bacon (*x*), where an executor, living in London, paid money to his co-executor, who had been the confidential agent and attorney of the testator, for the purpose of paying debts in the country where he resided, and the money was lost by his insolvency, Lord Loughborough held, that the executor, who had paid the money under such circumstances, should not be charged with the loss (*y*).

One executor not answerable for receipt of the other merely by taking probate, &c.

Again, it has been held, that one executor is not answerable for the receipt of the other, merely by taking probate, permitting the other to possess the assets, and joining in acts necessary to enable him to administer (*z*): Accordingly, where a bill of exchange was remitted to two agents, payable to them personally, who, on the death of the principal, became his executors, Lord Alvanley held, that the mere indorsement of one, after they were executors, in order to enable the other to receive the money, was not sufficient to charge him who did not receive it (*a*). So it was laid down by *Lord Redesdale in Joy *v.*

(*u*) Chambers *v.* Minchin, 7 Ves. 193, by Lord Eldon. See *ante*, p. *1709 *et seq.*

(*x*) 5 Ves. 331.

(*y*) This decision was approved of by Lord Eldon, in Chambers *v.* Minchin, 7 Ves. 193. See Davis *v.* Spurling, 1 Russ. & M. 66, where Sir John Leach, M.R., intimates, that an executor, handing over assets to his co-executor for the express payment of a particular debt, will not be answerable for their misapplication. See also Castle *v.* Warland, 32 Beav. 660. But in Hanbury *v.* Kirkland, 3 Sim. 265, on a marriage, a sum of stock was settled for the separate use of the wife for life, remainder for the husband for life, remainder for their children, with power to change securities with consent of the wife: The dividends on the stock being reduced, one of the trustees, in whom the husband and wife principally confided, and who, with his partners, was their solicitor, informed his co-trustees that he had an opportunity of investing the property in a mortgage at five per cent., and, with the consent of the husband and wife, requested his co-trustees to execute a power of attorney to enable him to sell the stock: The co-trustees, without inquiring into the matter, complied: The trustee sold the stock and absconded: And Sir L. Shadwell, V.-C., held that the co-trustees were liable. See also *Accord.* Broadhurst *v.* Balguy, 1 Y. & Coll. Ch. C. 16. Trutch *v.* Lamprell, 20 Beav. 116.

(*z*) Hovey *v.* Blakeman, 4 Ves. 596. But see *ante*, p. *1728, note (*h*), and Styles *v.* Guy, *post*, p.*1734.

(*a*) Hovey *v.* Blakeman, 4 Ves. 608, 609.

Campbell (*b*), that if an executor, living in London, remits money to his co-executor to pay debts in Suffolk, "he is considered to do this of necessity: he could not transact business without trusting some persons, and it would be impossible for him to discharge his duty, if he is made responsible where he remitted to a person to whom he would have given credit, and would in his own business have remitted money in the same way: It would be the same, were one executor in India, and another in England, the assets being in India, but to be applied in England; there the co-executor is appointed for the purpose of carrying on such transactions; and the executor is not responsible; for he must remit to somebody, and he cannot be wrong if he remits to the person in whom the testator himself reposed confidence" (*c*).

But the rule, it should seem, was different at law prior to the Judicature Act: Thus, in Crosse *v.* Smith (*d*), it was held, that an executor administering, having once received money, assets of his testator, could not discharge himself, under a plea of *plene administravit* to an action by a bond creditor, by showing that he paid the money over to his co-executor, even for the purpose of satisfying the bond creditor, who had applied for payment to such co-executor if the co-executor afterward misapplied the money by retaining it to satisfy his own simple contract debt. Now, however, the rule at law as well as in equity, is that the executor stands in the position of a gratuitous bailee, and, therefore, cannot be charged without some willful default (*e*).

Liability of executor who stands by and sees a breach of trust committed by his co-trustee:

*It may here be mentioned that by the established rules of Courts of Equity, it is the duty of all executors to watch over, and, if necessary, to correct the conduct of each other; and that an executor as well a trustee, who stands by and sees a breach of trust committed by his co-trustee, becomes responsible for that breach of trust (*f*).† Accordingly in

(*b*) 1 Sch. & Lef. 341.

(*c*) In Speight *v.* Gaunt, 22 C. D. 727, 744, Jessel, M.R., commenting on this case says: "That is a mere question of selecting an agent. Of course, although the testator reposed confidence in him something else might happen afterward, the man might become insolvent, or the like, it does not mean that, but it is an additional reason that a man who was in good credit at the time was actually named as executor by the testator."

(*d*) 7 East, 246.

(*e*) Job *v.* Job, 6 C. D. 562. Judic. Act, 1873, sect. 25 (sub-s. 11). See *ante*, p.*1535.

(*f*) † See next page.

Booth *v.* Booth (*g*), a testator bequeathed to his partner and to one Batkin, his personal estate, upon trust to invest the same, for the benefit of his wife and children: Both the executors proved the will, and the surviving partner retained the testator's moneys in the trade, which were lost: Batkin took no active part in the trusts, but was cognizant of the breach of trust, and took no proceedings to prevent it: And Lord Langdale, M.R., held, that Batkin was responsible for the consequences of the breach of trust. So, in Lincoln *v.* Wright (*h*), two executors permitting their co-executor to retain in his hands the ascertained residue, were held by the same learned judge to be liable for a breach of trust. Again, in Styles *v.* Guy (*i*), where two of three executors, with the knowledge that there were unsettled accounts subsisting at the testator's death between him and their co-executor, in which they had reason to believe that the latter was considerably indebted to the estate, took no effectual measures to compel him to account and pay or secure the balance for several years, at the end of which he became bankrupt, Lord Cottenham held, that the solvent executors (who were unable to prove that an attempt to recover the money at an earlier period would have been fruitless) were responsible for the loss, as having been occasioned by their willful neglect and default (*k*).

In cases of the description lately above considered, a trustee *or executor will not be protected by the usual indemnity clause, exonerating him from all responsibility on account of the acts of his co-trustees or co-executors (*l*).

not precluded by the usual indemnity clause.

By stat. 22 & 23 Vict. c. 35, s. 31, it is enacted that "every deed, Will, or other instrument creating a trust, either expressly or by implication, shall, without prejudice to the clauses actually contained therein, be deemed to contain a clause in the words or to the effect following; that is to say, That the trustees or trustee for the time being of the said deed, Will, or other instrument, shall be respectively chargeable only for such moneys,

22 & 23 Vict. c. 35, s. 31.

Every trust instrument to be deemed to contain clause for the indemnity as to loss of asset and reimbursement of the trustees.

(*f*) 1 Mac. & G. 433, by Lord Cottenham. Williams *v.* Nixon, 2 Beav. 475, by Lord Langdale. Horton *v.* Brocklehurst, 29 Beav. 510, by Romilly, M.R.

† See note 2 on p. *1743 *ubi infra.*

(*g*) 1 Beav. 125.

(*h*) 4 Beav. 427.

(*i*) 1 Mac. & G. 422.

(*k*) See also Egbert *v.* Butter, 21 Beav. 560. Candler *v.* Tillett, 22 Beav. 257.

(*l*) Mucklow *v.* Fuller, Jacob. 198. See also Underwood *v.* Stevens, 1 Meriv. 712. Hanbury *v.* Kirkland, 3 Sim. 265. Williams *v.* Nixon, 2 Beav. 472.

stocks, funds, and securities, as they shall respectively actually receive, notwithstanding their respectively signing any receipt for the sake of conformity, and shall be answerable and accountable only for their own acts, receipts, neglects, or defaults, and not for those of each other, nor for any banker, broker, or other person with whom any trust moneys or securities may be deposited, nor for the insufficiency or deficiency of any stocks, funds, or securities, nor for any other loss, unless the same shall happen through their own willful default respectively; and also that it shall be lawful for the trustees or trustee for the time being of the said deed, Will, or other instrument, to reimburse themselves or himself, or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trusts or powers of the said deed, Will, or other instrument."

Liability of an executor who renounces after an act of administration.

*It may here be observed, that if an executor administers part of the assets, he shall be charged with such as he has received, although he has renounced the executorship, and paid the money to a co-executor who proved the will (*m*):† For executors must either wholly renounce, or if they act to a certain extent as executors, and take upon them that character, they can be discharged only by administering the assets themselves, or by putting the administration into the hands of a Court of Equity (*n*). Thus in Doyle *v.* Blake (*o*), A., named executor in a will, acted on behalf of particular legatees, disclaiming an intention of interfering generally: He afterward renounced formally in favor of B. who was named a trustee in the same will, who thereupon obtained administration *cum testamento annexo:* B. possessed himself of the assets, and afterward died insolvent: And it was held that A. was liable, as executor, notwithstanding his renunciation; and was an-

Dix *v.* Burford, 19 Beav. 409. Brumridge *v.* Brumridge, 27 Beav. 5. But where the will provided that any trustee who shall pay to his co-trustee, or enable him to receive moneys for the general purposes of the will, should not be obliged to see to due application thereof or be responsible by express or implied notice of the misapplication, it was held that this was a good answer to a bill against two of three trustees to make good trust moneys which they had allowed their co-trustee to receive: Wilkins *v.* Hogg, 3 Giff. 116. See *Accord.* Pass *v.* Dundas, 43 L. T. 665; 29 W. R. 332.

(*m*) Read *v.* Truelove, Ambl. 417.

† See Vol. I. pp. 325, n., 329, n.

(*n*) Doyle *v.* Blake, 2 Sch. & Lef. 231, 245. See Riky *v.* Kemmis, 1 Lloyd & Goold, 101. Horton *v.* Brocklehurst, 29 Beav. 504.

(*o*) 2 Sch. & Lef. 231.

swerable for the acts of B., it appearing that he had a control over the assets, and B. being considered as having obtained possession thereof by his means. So in Underwood *v.* Stevens (*p*), one of two executors and trustees did not act, otherwise than by joining with his co-executor and trustee in the sale of stock, under a representation that the sale was necessary for payment of debts, which it was not; the produce was received by the latter, and the greater part applied by him to his own private purposes: And the first executor was held chargeable for the amount, except so far as any part was applied to the trust purposes; together with interest at four per cent.; notwithstanding the parties beneficially interested consented to and approved of the sale, under a similar misrepresentation. Again, in Rogers *v.* Frank (*q*), the defendant, named in the will as executor, did not prove the will, but before he *renounced, he collected large sums belonging to the estate of the testator: And it was held that he was liable to be sued in equity in the character of executor by the legatees under the will, one of whom was also executrix, and had proved the will (*r*).

But an executor, who has not proved, is not to be considered as acting, by assisting a co-executor who has proved, in writing letters to collect debts, or by writing directly to a debtor of the testator, and requiring payment (*s*). So, if one of two persons named executors disclaims and renounces, who afterward possesses himself of assets as agent to the other, who has proved the will, the former does not thereby become accountable as executor (*t*). So in Stacey *v.* Elph (*u*), a person named as executor and trustee under a will did not formally renounce probate until after the death of the acting executrix, nor did he ever disclaim by deed the trust of the real estate; but he purchased a part of the real estate, and took the conveyance from the widow, who was tenant for life, and the heir, to whom the estate must have descended upon the disclaimer of the trust: During the life of the acting executrix, however, he interfered in the disposition of the testator's property, as her friend or agent: and it was held that he was not, under the circumstances, chargeable as executor or trustee. But in Harrison *v.* Graham (*x*), the case was as fol-

(*p*) 1 Meriv. 712.

(*q*) 1 Younge & Jerv. 409.

(*r*) See also Harrison *v.* Graham, stated *infra*.

(*s*) Orr *v.* Newton, 2 Cox, 274.

(*t*) Dove *v.* Everard, 1 Russ. & M. 231. See also Lowry *v.* Fulton, 9 Sim. 104.

(*u*) 1 M. & K. 195.

(*x*) 3 Hill's MS. 239. 1 P. Wms. 241, note (*y*) to 6th edition.

[*1737]

lows: Barbara Graham by will appointed her mother, her sisters Margaret and Elizabeth, and her brother Robert, her executors, and died: Margaret alone proved the will, and acted chiefly as executrix, and was described as the only acting one, in a letter of attorney executed by the others, who were therein described as executors, to empower Margaret to receive a quantity of stock: Robert, by virtue of another letter of *attorney, executed by the other executors, transferred a quantity of the testatrix's S. S. Stock, received the money, and paid it over the same day to Margaret: After this she and the mother died, making Robert their executor: It did not appear that Robert had, under the first executorship, done any other act as executor, besides giving the one letter of attorney, and receiving the other: The question was, whether this was such an act of administration in Robert, as should make him chargeable as to his own estate: The Master had charged him, and the case came on, upon exceptions to the report: Lord Hardwicke:—"The question in the case is, whether or no this defendant had acted as an executor, and consequently whether he is chargeable? I agree that there may be cases where an executor may act as an attorney to the other executors. If an executor renounces and then acts under a letter of attorney, it is no administration: for it depends on the nature of the act, accompanied with any other acts. Here is a Will and four executors. The Will is proved by one only, with a reservation of the rights of the other three. Here appear to have been acts done by them all, and a letter of attorney given by the defendant, together with the other executors, to Margaret, who indeed is described therein as the only acting executrix. But the defendant describes himself there as an executor. This was clearly acting as an executor. Then he afterward accepts another letter of attorney from Margaret, and the rest of the executors. Shall executors be allowed to discharge themselves at their pleasure from being liable to assets? Money comes into his hands, he pays it over to Margaret; this cannot discharge him" (*y*).

Liability of an executor who has proved, but declines to act as executor.

It is a general rule, that where an executor has once proved the will, he cannot renounce his representative character, and act under another: he can do no act in regard to the estate for which he is not answerable as executor.

(*y*) See also James *v.* Frearson, 1 Y. & Coll. Ch. C. 370; and the cases collected, *ante*, pp.*230–*233.

[*1738]

In the case of Graham *v.* Keble (*z*), a partner in a house of *agency in India, where a deposit was made in trust for a particular purpose, was made one of the executors of him who made the deposit, and proved the will: A power of attorney was sent from the executors in Europe to the house of agency, for them to act under: But it was held, that as the partner named executor had proved the will, the house could only act under his authority, and that he himself could not renounce the executorship, and act in another character. But a co-executor, who proved, but never acted, cannot be charged by reason of the mere circumstance that he received a letter by the post from a debtor to the estate, inclosing a bill of exchange on account of his debt, which bill the co-executor immediately sent to the acting executor, who afterward became insolvent (*a*).

Liability of a co-executor joining in a receipt.

Formerly there was much discussion as to whether an executor who joined in signing a receipt for money of which he had never had control, but which had been received by his co-executor, thereby made himself liable for its application (*b*).

Stat. 22 & 23 Vict. c. 35, s. 31.

The non-liability of the executor appears to be now fully settled by the stat. 22 & 23 Vict. c. 35, s. 31 (*ante*, p. 1735).

When a *devastavit* is released by concurrence or acquiescence.

Although it is true, as a general rule, that concurrence in the act of *devastavit* on the part of the parties injured by it, or acquiescence without original concurrence, will release the executors (*c*),† yet the court must inquire into all the circumstances which induced concurrence or acquiescence, and ascertain whether their conduct really amounts to such a previous sanction or subsequent ratification as ought to relieve the executors from responsibility (*d*).

(*z*) 2 Dow. P. C. 17.

(*a*) Balchen *v.* Scott, 2 Ves. 678.

(*b*) See 8th edit. of this work, pp. 1840–1843.

(*c*) Griffiths *v.* Porter, 25 Beav. 236.

† See note on p. *1875, *ubi infra.*

(*d*) Walker *v.* Symonds, 3 Swanst. 1. Burrows *v.* Walls, 5 De G. M. & G. 233, 251. Davies *v.* Hodgson, 25 Beav. 177. Neglect to sue, even for eighteen years, by a specialty creditor, is not such acquiescence in the non-payment by an executor of a sum payable under a covenant as to preclude the creditor from suing or charging the executor with a *devastavit* in neglecting to convert shares in a bank, which afterward failed, and raise the necessary sum to pay the amount: Re Baker, 20 C. D. 230. The Court of Appeal in this case refused to draw any inference of concurrence or acquiescence from neglect to sue within the time limited by the Statute of Limitations. On the other hand, in Sleeman *v.* Wilson, L. R. 13 Eq. 36, where persons claiming as beneficiaries under a trust acquiesced for many years in no steps being taken to-

51 & 52 Vict. c. 59, s. 6.

*It may be noted that by sect. 6 of the Trustee Act, 1888 (51 & 52 Vict. c. 59), it is provided that:

Indemnity for breach of trust.

(1) "Where a trustee (*e*) shall have committed a breach of trust at the instigation or request, or with the consent in writing (*ee*) of a beneficiary, the Court may, if it shall think fit, and notwithstanding that the beneficiary may be a married woman entitled for her separate use, whether with or without a restraint upon anticipation, make such order as to the Court shall seem just (*eee*) for impounding all or any part of the interest of the beneficiary in the trust estate by way of indemnity to the trustee or person claiming through him."

(2) "This section shall apply to breaches of trust committed as well before as after the passing of this Act, except where an action or other proceeding shall be pending with reference thereto at the passing of this Act."

Distinction as to executors' liability between creditors and legatees.

It may be observed, in concluding this subject, that in Churchill *v.* Hobson (*f*), Lord Harcourt took a distinction between creditors and legatees (*g*). But Lord Thurlow, in Sadler *v.* Hobbs (*h*), said that this seemed to him an odd *distinction, that a creditor should have a right to charge an executor and a legatee not. It should seem, however, that there may be cases where the strictness of law would charge a man as executor as to creditors, in which a Court of Equity would not charge him as to legatees: For example, legatees are bound by the terms of the will, but creditors are not so: and therefore, in

ward realizing securities, a portion of the trust estate, and after the death of the trustee filed a bill against the executors of the trustee, it was held that the plaintiffs, by their acquiescence, had lost their right to make any claim against the estate of the trustee: Cf. Dixon *v.* Dixon, 9 C. D. 587. Re Hulkes, 33 C. D. 552.

(*e*) Which, as above stated, includes, by sect. 1 (3), an executor or administrator.

(*ee*) The words "in writing" apply only to "consent," and not to "instigation" or "request." Griffith *v.* Hughes, [1892] 3 Ch. 105.

(*eee*) The discretion which this section confers upon the court of ordering that the interest of the beneficiary be impounded by way of indemnity to the trustee, ought to be exercised in a case where both the trustee and the instigating beneficiary were aware of the facts which constitute the breach of trust. Griffith *v.* Hughes, *ubi sup.*

(*f*) 1 P. Wms. 242.

(*g*) See the remark of Lord Northington on this distinction, Haden *v.* Parsons, 1 Eden, 148.

(*h*) 2 Bro. Chanc. Cas. 117.

many instances executors would be discharged as against legatees, though not as against creditors (*i*).

It remains to consider the doctrine of *devastavit*, as applied to the case of a married woman, executrix or administratrix.

Present law as to liability of *feme covert* executrix.

It is provided by the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), that:—

45 & 46 Vict. c. 75.

Sect. 1. (2) "A married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued, either in contract or in tort or otherwise, in all respects as if she were a *feme sole*, and her husband need not be joined with her as plaintiff or defendant, or be made a party to any action or other legal proceeding brought by or taken against her; and any damages or costs recovered by her in any such action or proceeding shall be her separate property; and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property, and not otherwise."

And by sect. 24: "The word 'contract' in this Act shall include the acceptance of any trust, or of the office of executrix or administratrix, and the provisions of this Act as to liabilities of married women shall extend to all liabilities by reason of any breach of trust or *devastavit* committed by any married woman being a trustee, or executrix, or administratrix, either before or after her marriage, and her husband shall not be subject to such liabilities unless he has acted or intermeddled in the trust or administration. The word 'property' in this Act includes a thing in action."

And by sect. 18: "A married woman who is an executrix or administratrix alone or jointly with any other person or persons of the estate of any deceased person, or a trustee *alone or jointly as aforesaid of property subject to any trust, may sue or be sued, and may transfer, or join in transferring, any such annuity or deposit as aforesaid (*k*), or any sum forming part of the public stocks or funds, or of any other stocks or funds transferable as aforesaid (*k*), or any share, stock, debenture, debenture stock, or other benefit, right, claim, or other interest of or in any such corporation, company, public body, or society in that character, without her husband, as if she were a *feme sole*."

And by sect. 23: "For the purposes of this Act the legal personal

(*i*) Doyle *v.* Blake, 2 Sch. & Lef. 239, 240.

(*k*) See sect. 6 of the act.

[*1742]

representatives of any married woman shall in respect of her separate estate have the same rights and liabilities and be subject to the same jurisdiction as she would be if she were living."

Liability of husband and *feme covert* executrix for *devastavits* before Married Women's Property Act, 1882:

before marriage:

Before the passing of the Married Women's Property Act, 1882, if a *feme sole*, being an executrix or administratrix, wasted the goods of her testator or intestate and then married, her husband was liable, as long as the coverture lasted, for the *devastavit* (*l*). But, upon her death his liability ceased: And such being the principle of law, Courts of Equity have held, that they could not establish any rule upon the difference whether the husband had or had not received a portion with his wife (*m*).

It must, however, be observed, that if the wife was entitled to any *choses in action*, which the husband did not reduce into possession in her lifetime, so that it became necessary for him to take out administration to her, he was liable, as her administrator, for her *devastavit*, by virtue of the statute 30 Car. II. c. 12 (*n*).

during coverture:

With respect to the *devastavit* of the wife committed during the coverture, the husband was liable in law and in equity, as long as both parties were alive, for the acts of his wife as executrix or administratrix: for, as she had no power *to act alone, his assent was presumed (*o*): And it was holden, that the husband, though living separate from his wife, should be charged with her *devastavit* (*p*). If the assets were wasted, during the coverture, either by the husband or wife, a creditor or legatee of the testator might, it should seem, sue the wife as well as the husband, and if she predeceased him, her estate was answerable (*q*).

Upon the death of the wife, the general rule was, that the liability of the husband (except as her administrator) for his wife's *devastavit*, committed as well during coverture as before, ceased (*r*).

(*l*) Kings *v.* Hilton, Cro. Car. 603. Heyward's case, Moore, 761. Lumley *v.* Hutton, 1 Roll. Rep. 268, 269. Bachelor *v.* Bean, 2 Vern. 60. Com. Dig. Baron and Feme (N). Palmer *v.* Wakefield, 3 Beav. 227.

(*m*) Adair *v.* Shaw, 1 Sch. & Lef. 263.

(*n*) See *ante*, p.*1601.

(*o*) Adair *v.* Shaw, 1 Sch. & Lef. 266.

(*p*) Paget *v.* Read, 1 Vern. 143.

(*q*) Kingham *v.* Lee, 15 Sim. 401, by Shadwell, V.-C.

(*r*) Adair *v.* Shaw, 1 Sch. & Lef. 261. 1 Saund. 219, *d*, note to Wheatley *v.* Lane. Likewise, if the goods of the testator remain *in specie* in the hands of the husband, the party entitled to them may, after the death of the wife, bring an action of trover or detinue against the husband to recover them: 1 Sch. & Lef. 262.

[*1743]

But in equity, the surviving husband was liable for whatever assets came to the hands of his wife, or his own hands, during the coverture; upon the principle that all persons coming into possession of property bound by a trust are chargeable in equity as trustees: The cases establishing this head of equity are collected and commented upon by Lord Redesdale in his elaborate judgment in Adair *v.* Shaw (*s*), in which case his lordship held, that where a *feme covert* obtained administration, and the goods were wasted during coverture, and the husband died, his assets were chargeable in equity for the waste committed during coverture. So in Smith *v.* Smith (*t*), Romily, M.R., said it was settled law that a husband was liable for all the assets received or *devastavits* committed, either by himself or by his wife during the coverture, in respect of an estate of which his wife was legal personal representative, and that in this respect the husband was liable at law during his life and his estate after his death (*u*).

husband's liability after coverture for assets come to his hands:

liability of his estate where the wife survives.

(*s*) 1 Sch. & Lef. 243. See also Clough *v.* Bond, 3 My. & Cr. 499. 8 Sim. 594.

(*t*) 21 Beav. 385, 387.

(*u*) See also Charlton *v.* Coombes, 4 Giff. 382.

---

2. *Liability of co-executors.* In general, each one of several co-executors or administrators is liable only for his own acts and for the assets that come to his own hands. Lenoir *v.* Winn, 4 Desaus. 65; Knox *v.* Pickett, Id. 92. Where there is no negligence on his part, and no reason for suspicion against his co-executor, he may remain passive and leave the administration in the hands of his co-executor. He will not be liable in such case for the acts of the acting executor, Taylor *v.* Shuit, 4 Dem. 528; Matter of Hall, 5 Dem. 42; Clarke *v.* Jenkins, 3 Rich. Eq. 318; Schenck *v.* Schenck, 1 C. E. Gr. 174; especially where the testator himself directed that the other executor (his widow) should remain in the full possession and enjoyment of the estate, Vanpelt *v.* Veghte, 2 Green (N. J.) 207; or gave the personal property to her absolutely, with remainder after her death only in what might remain over, Estate of Heppenstall, 144 Pa. St. 259; or devised the property to one of them for life with the exclusive power of sale. Matter of Blauvelt, 131 N. Y. 249, revg. 60 Hun 394. He does not become liable even by buying at the co-executor's sale of assets, Moseley *v.* Floyd, 31 Ga. 564; nor by suffering assets to come into the hands of his co-executor who was a minor. Ray *v.* Doughty, 4 Blackf. 115.

He cannot, however, make a valid agreement with the co-executor that the latter shall have the sole management of the estate, Wilson *v.* Lineberger, 94 N. C. 641; nor relieve himself from all responsibility by tacitly consenting to such an arrangement, Schenck *v.* Schenck, 1 C. E. Gr. 174; or by transferring the assets to the co-executor.

Id.; Edmonds *v.* Crenshaw, 14 Pet. 166. But where he has simply abstained from acting, the court will presume a sufficient and valid reason for his failure to do so. Grayson *v.* Weddle, 63 Mo. 523.

Each executor is liable to account only for the assets that have come to his own hands, and not for those received by his co-executor, Tompkins *v.* Tompkins, 18 S. C. 1; Clarke *v.* Jenkins, 3 Rich. Eq. 318; Ochiltree *v.* Wright, 1 Dev. & B. Eq. 336; Adair *v.* Brimmer, 74 N. Y. 539; Ormiston *v.* Olcott, 84 N. Y. 339; Duncan *v.* Davison, 13 Stew. (N. J.) 535; Gates *v.* Whetstone, 8 S. C. 244; Anderson *v.* Earle, 9 S. C. 460; Fennimore *v.* Fennimore, 2 Gr. Ch. 292; Tichenor *v.* Tichenor, 10 Stew. (N. J.) 163; Roach *v.* Hubbard, 6 Litt. 235; Moore *v.* Tandy, 3 Bibb 97; although the money was the proceeds of a formal joint sale, Croft *v.* Williams, 88 N. Y. 384; and paid over by a check to the order of both executors, indorsed by one to the other, Paulding *v.* Sharkey, 88 N. Y. 432; especially to a distributee who has received his share and paid it back to one of the executors for safe keeping. Estate of Soley, 11 Phila. 144. So, a debt of the executor is assets in his hands, but his co-executor is not chargeable until it is paid over to him. Clarke *v.* Cotton, 2 Dev. Eq. 51. Each executor is liable to the extent of the assets in his hands in an action brought for a legacy against both of the executors, Bellerjeau *v.* Kotts, 1 South. 359; Robinson's Appeal, 7 Phila. 61; and such action may be brought against the one only that has assets in hand, Negley *v.* Gard, 20 Ohio 310; or against the representative of such executor, without joining the survivor. Brotten *v.* Bateman, 2 Dev. Eq. 115; Doebler *v.* Snively, 5 Watts 225. Separate judgment may be rendered against them for the assets found in their hands severally. Kavanaugh *v.* Thompson, 16 Ala. 817.

Effect of negligence. The rule that one executor or administrator is not liable for the separate acts of the other extends to all cases of maladministration and devastavit to which he contributes neither passively by his negligence nor actively as a wrongdoer. Banks *v.* Wilkes, 3 Sandf. Ch. 99; Peter *v.* Beverly, 10 Pet. 532; Matter of Cozzens, 2 Connoly 622; Sutherland *v.* Brush, 7 Johns. Ch. 17; Cocks *v.* Haviland, 124 N. Y. 426; White *v.* Bullock, 20 Barb. 91; Ray *v.* Doughty, 4 Blackf. 115; Cameron *v.* Justices, 1 Ga. 36; Hall *v.* Carter, 8 Ga. 388; Heath *v.* Allin, 1 A. K. Marsh. 442; Worth *v.* McAden, 1 Dev. & B. Eq. 199; Williams *v.* Maitland, 1 Ired. Eq. 92; Kerr *v.* Kirkpatrick, 8 Id. 137. Thus, where there is a testamentary direction for the investment of a fund to provide an annuity, after the investment is made it is not negligence for one executor to leave the custody of the securities to his co-executor. Dyer *v.* Riley, 6 Dick. (N. J.) 124. And a long continuance of the arrangement with the knowledge of the *cestui que trust* will estop him, after long default in the payment of the interest, from looking to the other executor. Id. So, it is not negligence to fail for two years to examine the bank account of the acting co-executor, Irwin's Appeal, 35 Pa. St. 294; although it would be negligence to knowingly allow the assets to remain for a long time uninvested in the co-executor's hands, notwithstanding a direction in the will for their investment. Miller's Appeal, 127 Pa. St. 95; Weigand's Appeal, 28 Pa. St. 471; Hays *v.* Hays, 3 Tenn. Ch. 88; Bates *v.* Underhill, 3 Redf. 365.

On the other hand, where the devastavit might have been prevented by him if he had not been culpably negligent, he will be liable, Johnson *v.* Corbett, 11 Paige 265; Clark *v.* Clark, 8

Paige 152; Adair *v.* Brimmer, 74 N. Y. 539; Wilmerding *v.* McKesson, 103 N. Y. 329; Matter of Myers, 131 N. Y. 409; Schenck *v.* Schenck, 1 C. E. Gr. 174; Smith *v.* Pettigrew, 7 Stew. (N. J.) 216; Bechtold *v.* Read, 4 Dick. (N. J.) 111; Laroe *v.* Douglass, 2 Beas. 308; Matter of Cozzens, 2 Connoly 622; Fonte *v.* Horton, 36 Miss. 350; notwithstanding the honesty of his belief and intentions. Head *v.* Bridges, 67 Ga. 227. In general, both executors are liable if one knows of the intended devastavit of the others and takes no steps to prevent it. Wayman *v.* Jones, 4 Md. Ch. 500; McCormick *v.* Wright, 79 Va. 524. The Probate Court has, however, no jurisdiction to hold an executor to account for loss by his negligence by the devastavit of his co-executor. Duncan *v.* Davison, 13 Stew. (N. J.) 535.

Joint devastavit. One is, in like manner, liable for the devastavit of the other to which he has actually contributed. Johnson *v.* Johnson, 2 Hill Ch. 277; Estate of Brown, 11 Phila. 127; Fonte *v.* Horton, 36 Miss. 350. His consent is sufficient co-operation. Drake *v.* Paige, 127 N. Y. 562; Adair *v.* Brimmer, 74 N. Y. 539; McNair *v.* Ragland, 1 Dev. Eq. 516; Blackwell *v.* Blackwell, 2 Stew. (N. J.) 576, affd. 4 Id. 796; McCormick *v.* Wright, 79 Va. 524. So, if he sells property of the estate to his co-executor. Case *v.* Abeel, 1 Paige 393; Gilbert's Appeal, 78 Pa. St. 266. But he will not be liable for his co-executor's non-payment of the rent of the homestead which had been rented to him. Tichenor *v.* Tichenor, 10 Stew. (N. J.) 163.

So, one executor will be liable for the devastavit of the other where he voluntarily delivers assets of the estate to him, Fisher *v.* Skillman, 3 C. E. Gr. 229; Estate of Verner, 6 Watts 250; Wyckoff *v.* Van Siclen, 3 Dem. 75; Matter of Storm, 28 Hun 499; Mesick *v.* Mesick, 7 Barb. 120; Matter of Osborn, 87 Cal. 1; Knight *v.* Haynie, 74 Ala. 542; or divides the estate with his co-executor, Weldy's Appeal, 102 Pa. St. 424; Thomas *v.* Scruggs, 10 Yerg. 401 (under a testamentary direction to invest); but see (under the Iowa statute) Nettman *v.* Schramm, 23 Ia. 521; or repays to his co-executor as mortgagor part of a mortgage debt to the estate, which had been inventoried at its face value by their joint inventory, and assigned for that amount by their joint assignment reciting that consideration. Bechtold *v.* Read, 4 Dick. (N. J.) 111. So, where he joins the other in making sale of the personal property, and lets the other take the proceeds, Roberts *v.* Thomas, 32 Ga. 31; or allows the other to take and collect a joint note given to them both for land sold, and use it for many years without accounting. Deaderick *v.* Cantrell, 10 Yerg. 263. But where he turns over assets to his co-executor, he has been held to be liable only to creditors, and not to legatees. Brown's Case, 1 Dall. 311. And suffering the co-executor to take sole possession of what had been in her possession before as widow does not render her liable for his subsequent devastavit. Wright *v.* Dungan, 15 Abb. N. C. 107. Nor will the payment to him as executor of the executor's own debt to the estate. Matter of Demarest, 1 Connoly 200.

Loans to co-executors. If an executor lends money to his co-executor on insufficient security, he will be liable for its loss, Perrine *v.* Petty, 7 Stew. 193; or joins in selling property of the estate to a third party for the individual debt of his co-executor, Hauser *v.* Lehman, 2 Ired. Eq. 594; or if he allows his co-executor to borrow the funds of the estate, Matter of Cozzens, 2 Connoly 622; or to borrow them for his firm, Estate of Daly, 1 Tuck. 95; Wilmerding *v.* McKesson, 103 N. Y. 329; al-

though it is otherwise in the case of the hypothecation of assets by the co-executor for loans to himself and his partnership without knowledge of the executor, Wilmerding *v.* McKesson, *ubi supra;* or of the appropriation of funds by the co-executor to the business of his firm by means of fraudulent representations to the executor. Matter of Cocks, 1 Connoly 347.

Bonds—Joint or several. Where the executors or administrators give separate bonds, neither will be liable on such bond for the default of the other. McKim *v.* Aulbach, 130 Mass. 481. And even where the bond is joint and several, the sureties cannot after payment by them recover against the estate of a deceased representative for a waste committed after his death by the survivor, Brazer *v.* Clark, 5 Pick. 96; Towne *v.* Ammidown, 20 Pick. 535; although for the default of either in the lifetime of both the other may be made indirectly liable by payment by the surety and recovery against him for their indemnity. McCoun *v.* Sperb, 53 Hun 165; Nanz *v.* Oakley, 37 Hun 495. And see Vol. I. p. 636, n., *ubi supra.*

But under a joint bond they are liable for one another's default. Ames *v.* Armstrong, 106 Mass. 15; Pearson *v.* Darrington, 32 Ala. 227; Hinson *v.* Williamson, 74 Ala. 180; Laroe *v.* Douglass, 2 Beas. 308; Weyman *v.* Thompson, 5 Dick. (N. J.) 8; Clarke *v.* State, 6 Gill & J. 288; Newton *v.* Newton, 53 N. H. 537; Boyd *v.* Boyd, 1 Watts 365; Jamison *v.* Lillard, 12 Lea 690; Anderson *v.* Miller, 6 J. J. Marsh. 568; Sparhawk *v.* Buell, 9 Vt. 41; Braxton *v.* State, 25 Ind. 82; Jeffries *v.* Lawson, 39 Miss. 791; Eckert *v.* Myers, 45 O. St. 525; Albro *v.* Robinson, 93 Ky. 195, overruling Collins *v.* Carlisle, 7 B. Mon. 13; Caskie *v.* Harrison, 76 Va. 85; Yates *v.* Wilson, 86 Va. 625; McCormick *v.* Wright, 79 Va. 524.

Joint inventory—Receipt. A joint liability is not created by the mere fact that the executors have filed a joint inventory, Kerr *v.* Waters, 19 Ga. 136; Hall *v.* Carter, 8 Ga. 388; although it puts the burden on either executor to show what assets came to his hands, Graham *v.* Davidson, 2 Dev. & B. Eq. 155; and charges all executors (who are joint trustees) with knowledge of the improper character of the investments stated in it. Matter of Myers, 43 N. Y. S. R. 265.

So, joint liability is to be presumed from joint receipts given, Croswell on Exrs. § 590; Stewart *v.* Corner, 9 Ala. 803; Manahan *v.* Gibbons, 19 Johns. 427; but such evidence is not conclusive. Ochiltree *v.* Wright, 1 Dev. & B. Eq. 336; McNair's Appeal, 4 Rawle 148; Wilson's Appeal, 115 Pa. St. 95. "The rule . . . may appear somewhat different from that applied in equity to co-trustees, whose functions for the most part as depending upon the express terms of the will or deed which created their authority require that all should join in the particular act. Consequently, while co-trustees may not be liable for money which they did not receive, although they are joined in the receipt, co-executors have usually been held liable in such a case; for the act is an unmeaning one and unnecessary, unless they intend thereby to render themselves jointly answerable for the money." Schouler on Exrs. § 402.

Joint account. But the filing of a joint account renders all jointly liable for the balance stated to be in their hands, Tehan *v.* Maloy, 18 Stew. (N. J.) 68; Glacius *v.* Fogel, 88 N. Y. 434; Lightcap's Appeal, 95 Pa. St. 455; Matter of Osborn, 87 Cal. 1; Estate of Brierly, *81 Pa. St. 419; especially where the joint liability is established by the decree on the account. Earle *v.* Earle, 93 N. Y. 104; Weyman *v.* Thompson, 5 Dick. (N. J.) 8. So,

where they have afterward divided the balance between themselves. Ducommun's Appeal, 17 Pa. St. 268. And an account which is joint on its face is *prima facie* the joint account of both. Hamilton *v.* Serra, 6 Mackey 168. But their joint liability is said not to extend to the securities stated to be in hand, Lightcap's Appeal, *ubi supra;* except to charge them *prima facie* with liability for the improper character of investments shown in the account, Lacey *v.* Davis, 4 Redf. 402; nor will the estate of the non-acting executor be charged with a devastavit committed by the acting executor after his death, Young's Appeal, 99 Pa. St. 74; although it will be liable for a devastavit previously committed (especially if coupled with negligence on the decedent's part). Hengst's Appeal, 24 Pa. St. 413. And an executor may discharge himself by proof of mistake or fraud, showing the account to have been his only in form, Weyman *v.* Thompson, 5 Dick. (N. J.) 8; Suydam *v.* Bastedo, 13 Stew. (N. J.) 433; or that the assets were exclusively in the hands of his co-executor. Gaultney *v.* Nolan, 33 Miss. 569; Taylor *v.* Schuit, 4 Dem. 528.

In like manner one of several executors or administrators may protect himself by filing a separate account of the assets that have come to his hands, Davis' Appeal, 23 Pa. St. 206; Fennimore *v.* Fennimore, 2 Gr. Ch. 292; Duncan *v.* Davison, 13 Stew. (N. J.) 535; Irwin's Appeal, 35 Pa. St. 294; although the form of the account is not conclusive in equity, where it is in fact the separate account of the acting executor. English *v.* Newell, 15 Stew. (N. J.) 76.

Accounting between co-executors. An executor for good cause may cite his co-executor to account in the Probate Court, Ludlow *v.* Ludlow, 1 South. 189, 192; Buchan *v.* Rintoul, 10 Hun 183, King *v.* Shackleford, 13 Ala. 435; or in equity, Wood *v.* Brown, 34 N. Y. 337, to control custody of assets and make them accessible to both trustees. So, a surviving executor can call the representatives of his deceased co-executor to account for a devastavit committed by the latter in his lifetime. Douglass *v.* Murray, 63 Ga. 369. It is the duty of a trustee to protect the estate against his co-trustee where he has notice of danger, notwithstanding an express exemption in the will from responsibility for the other's acts. Crane *v.* Hearn, 11 C. E. Gr. 378. So, if the executors cannot agree as to investments, it is the duty of both to apply to the court for its direction and control. Holcombe *v.* Holcombe, 2 Beas. 413. But an executor cannot recover of his co-executor a distributive share lost through their joint negligence. Earle *v.* Earle, 93 N. Y. 104. And he cannot as partner in the individual investment of the trust funds compel the co-executor to account for the profits of their joint devastavit. Bowen *v.* Richardson, 133 Mass. 293.

Subrogation and contribution. Where one executor pays for the devastavit of the other, he is entitled to be subrogated to any rights existing in favor of either. Albro *v.* Robinson, 93 Ky. 195; *e. g.*, to the co-executor's interest as a devisee (not, however, preferred to his *bona fide* mortgagee), Drake *v.* Paige, 127 N. Y. 562; or to the right to subject lands charged with the payment in the hands of the heirs. Johnson *v.* Corbett, 11 Paige 265. So, he may claim contribution against other co-executors, Marsh *v.* Harrington, 18 Vt. 150; and exoneration from the culpable co-executor. Adams *v.* Gleaver, 10 Lea 367. An executor may even maintain an account against the sureties on their joint bond for contribution to payment required of him by the devastavit of the other executor. Nanz *v.* Oakley, 30 N. Y. S. R. 885.

*On the subject of the accounts of an executor or administrator,† there has already been occasion to state, that he must account for all profits which have accrued in his own time, either spontaneously, or by his acts, out of the estate of the deceased (*v*). Therefore, if an executor has a lease for years which yields profits to the value of 20*l.* a year, rendering rent of 10*l.* a year, he shall account for 10*l.* a year, as assets (*w*). So if the executor carries on the trade or business of the testator, whether in pursuance of a provision in articles of partnership entered into by the deceased, or by direction of the testator contained in his will, or under the direction of the Court of Chancery, the profits must be accounted for as assets (*x*). Where the executors employ the assets in carrying on the trade for their own benefit, the legatees are entitled, at their option, to interest at 5 per cent. on the amount of assets employed, or the profits actually made (*y*). An executrix who held the residue of the testator's estate in trust for herself for life and after her death for the children of the testator, entered into a fresh partnership with two other persons and brought in the testator's assets as part of the capital of the firm, the other partners having notice of the trusts of the testator's will, and it was held that the executrix and the other partners were bound to make good to the children the assets of the testator employed in trade, together with all profits, or else with interest at 5 per cent., at the option of the children (*z*). It will be observed that in Flockton *v.* Bunning (*a*) the transaction was not a mere loan in breach of trust as in Stroud *v.* Gwyer (*b*) and Vyse *v.* Foster (*c*), but an embarking of trust funds in a partnership *business, and that all the partners were cognizant of the breach of trust and were defendants in the suit. It will also be observed that in the case of Vyse *v.* Foster, the partnership business in which the estate of the dead partner was embarked was duly wound up and the share of the dead partner ascertained, and the case therefore did

Executors' accounts:

they shall account for all profits:

† See note 3 on p.*1759 *ubi infra.*

(*v*) *Ante*, p. *1519. So he must account for all profits derived from his *office* as executor, as where he abandons it in favor of another for a valuable consideration: Sugden *v.* Crossland, 3 Sm. & G. 192.

(*w*) Godolph, Pt. 2, c. 24, s. 1. Com. Dig. Assets (C.).

(*x*) *Ante*, pp.*1520,*1681. Palmer *v.* Mitchell, 2 M. & K. 672. Willett *v.* Blanford, 1 Hare, 253.

(*y*) Wedderburn *v.* Wedderburn, 22 Beav. 100. *Post*, p.*1753.

(*z*) Flockton *v.* Bunning, L. R. 8 Ch. 323, note.

(*a*) L. R. 8 Ch. 323, in note to Vyse *v.* Foster.

(*b*) 28 Beav. 130.

(*c*) L. R. 8 Ch. 309. L. R. 7 H. L. 318.

[*1744] [*1745]

not fall within the class of cases of which Crawshay *v.* Collins (*d*), Brown *v.* De Tastet (*e*), Yates *v.* Finn (*f*), are leading authorities. And the executor may be made to account for and pay over the profits, although the persons in partnership with whom he had made those profits are not made parties to the suit. So in the case of surviving partners who are the executors of the deceased partner, and who continue the trade after his death, employing his assets, they must account for the profits made by such employment (*g*), and it makes no difference that they have taken a security for it in the form of a mortgage of the real and personal property belonging to the partnership (*h*). It will be observed that, in the cases referred to, the relation of the executors and surviving partners was that of partners. In the case of Vyse *v.* Foster (*i*), the terms of the articles of partnership were such that on the death of any partner his share was to be taken by the surviving partners at a price to be ascertained from the last stocktaking, and to be paid by installments extending over two years with interest at 5 per cent. from his death. The testator appointed three executors, one of whom was one of his partners in the business, and another some years after his death became a partner, and the third never was concerned in the business. The relation, therefore, between the executors and surviving partners was that of creditor and debtor, and the executors allowed the price payable by the surviving partners to remain outstanding on the personal security of persons engaged in trade: one of *the executors at first and afterward two of them being engaged in such trade as partners and having the use of the moneys so left in their hands. This the court held to be, at least technically, a breach of trust, and James, L.J., in dealing with the liability incurred by the executors by this breach of trust says: "If an executor commits a breach of trust, he and all those who are accomplices with him in that breach of trust are all and each of them bound to make good the trust funds and interest. If an executor or a trustee makes profit by improper dealing with the assets or trust fund, that profit he must give up to the trust: if that improper dealing consists in embarking or investing the trust money in business, he must account for the profits made by him by such employment in such business; or at the option of

(*d*) 15 Ves. 218.
(*e*) Jac. 284.
(*f*) 13 C. D. 839.
(*g*) Wedderburn *v.* Wedderburn, *ubi supra.* Townend *v.* Townend, 1 Giff. 201.
(*h*) *Ibid.*
(*i*) L. R. 8 Ch. 309.

[*1746]

the *cestui que trust*, or if it does not appear or cannot be made to appear what profits are attributable to such employment, he must account for trade interest, that is to say, interest at 5 per cent." (*j*). The learned lord justice then pointed out that in the case in question it did not appear, and could not be made to appear, what profits were attributable to the employment of the trust money in the business, and the court held that the plaintiff, who was one of the *cestuis que trustent*, was not entitled to any account of profits, the mere delay by executors in calling in any debt due to the testator's estate from the firm of which some of the executors were members not giving his estate any right to share in the profits of the business.

This decision of the Court of Appeal was affirmed by the House of Lords (*k*), and Lord Cairns, L. C., in delivering his opinion said: "If a partner in a trading firm dies, and if he constitutes one or more of his co-partners his executors, and if there is nothing special in the contract of co-partnership, and if the assets of the testator are not withdrawn from the co-partnership but are left in it, and no liquidation is arrived at, no settlement of accounts come to, it is a trite and *familiar rule in the Court of Chancery to hold that the estate of that testator is to all intents and purposes entitled to the benefit of a share of the profits which are made in the trade after his death. And if this should happen, which is the principle of another class of cases, that the partnership articles have given the surviving partners an option to take to the interest of the testator on certain terms, at a certain price, to be fixed by arrangement after the death of the testator, an option or power which may be accepted or refused, but which if accepted and acted upon, must be acted upon according to the terms on which it is given; if in a case of that kind the surviving partners, or one or more of them, being also executors of the deceased partner, are found not to have pursued exactly the terms of the power or option which has been given, then again the power or option to become purchasers of the interest of the testator after his death falls to the ground, and the partnership remains an unliquidated partnership, to a due share of the profits of which the estate of the testator will continue to be entitled until liquidation actually takes place." Lord Cairns, after pointing out that on the facts of the particular case before the House the plaintiff was not entitled to an account of the profits, proceeded thus: "I am bound to say that it appears to me that whenever a case shall occur in which relief

(*j*) L. R. 8 Ch. 329. (*k*) L. R. 7 H. L. 318.

[*1747]

upon the footing of an account of profits ought to be given, if it should appear that the executors of a deceased partner, acting along with surviving partners, have deliberately and without justification employed the assets of the testator in the trade of the partnership, I should expect to find that the Court of Chancery would be prepared to hold that all partners, not merely those who are executors of the testator but also the surviving partners who are not executors, would be liable to account for profits made by the employment of that which to the knowledge of all of them is trust money which ought not to have been so applied. But I have not heard of any case, and I have not been able to find any case—for I put aside the case of Brown *v.* De Tastet (*kk*) by reason of the *great peculiarity of the facts of that case—where one surviving partner, being an executor, has been made answerable for the whole of the profits made in the trade by the employment of the capital of the testator, those profits being received not merely by the executor but by other partners not brought before the Court nor subjected to any liability under the decree."

On the other hand, where the surviving partners admit the executor into the firm in his individual character, and the business is carried on without employing, in any way, any part of the assets of the testator, he will not have to account for profits as assets (*l*). Accordingly, in Cook *v.* Collingridge (*ll*), a sale of a testator's share in a partnership trade, and the property belonging to it, made by his executors to his partners, for the purpose of being resold to one of his executors, was set aside, and his estate held entitled to his *aliquot* proportion of the subsequent profits as if the partnership had continued (*m*). And it is a general rule, that an executor cannot be allowed, either immediately or by means of a trustee, to be a purchaser from himself of any part of the assets, but shall be considered a trustee for the persons interested in the estate, and shall account for the utmost extent of advantage made by him of the subject so

(*kk*) Jac. 284.

(*l*) Simpson *v.* Chapman, 4 De G. M. & G. 154.

(*ll*) Jacob, 607. See 27 Beav. 456, note.

(*m*) "One of the most firmly established rules is, that persons dealing as trustees and executors must put their own interest entirely out of the question, and this is so difficult to do in a transaction in which they are dealing with themselves, that the Court will not inquire whether it has been done or not, but at once says that such a transaction cannot stand:" By Lord Eldon, Jacob, 621. See *Acc.* Wedderburn *v.* Wedderburn, 2 Keen, 722. 4 My. & Cr. 11. Willett *v.* Blanford, 1 Hare, 253. See also Portlock *v.* Gardner, 1 Hare, 594, 603.

purchased (*n*). So if an executor compounds debts or mort*gages, and buys them in for less than is due upon them, he shall not take the benefit of it himself, but other creditors and legatees shall have the advantage of it; and for want of them, the benefit shall go to the party who is entitled to the surplus (*o*). So in a case where the executor of a mortgagee for a term of years purchased the equity of redemption in fee for a small sum in his own name, and for his own benefit, it was held that he was a trustee of the fee for the benefit of the testator's estate (*p*).

Again, if an executor lays out the assets on private securities, although he shall answer for all deficiencies which may be caused thereby (*q*), he must account to the estate for all the benefit (*r*). Indeed, the principle is general, that an executor, if he will take upon himself to act with regard to the testator's property in any other manner than his trust requires, puts himself in this situation: that if there be any loss he must replace it; but he cannot possibly be a gainer by it: any gain must be for the benefit of his *cestui que trust* (*s*).

in what cases executors are charged with interest:

This may be the proper place to inquire, under what circumstances executors or administrators shall be charged with interest on the assets retained in their hands.† There *are two grounds on which an executor or administrator may be charged with interest: 1st. That he has been guilty of negligence

(*n*) Hall *v.* Hallett, 1 Cox, 134. Watson *v.* Toone, Madd. & Geld. 153. *Ante*, p. *807. Smedley *v.* Varley, 23 Beav. 358. See De Cordova *v.* De Cordova, 4 App. Cas. 692. In Clark *v.* Clark, 9 App. Cas. 733, it was held by the Privy Council that a sale is not to be avoided merely because when entered upon the purchaser has the power to become trustee of the property purchased, as, for instance, by proving the will which relates thereto, though in point of fact he never does become such. Such a purchaser is under no disability, and in order to avoid such sale it must be shown that he in fact used his power in such a way as to render it inequitable that the sale should be upheld.

(*o*) Anon. 1 Salk. 155. *Ex parte* James, 8 Ves. 346. Where an executor contracted with legatees for the purchase of their legacies, which were accordingly assigned to a trustee for him, in consideration of sums of money less in amount than the legacies, it was admitted that the transaction could not be sustained for the benefit of the executor; and it was also held that the deed of assignment did not operate as a release of the estate, and could not be upheld, as against the legatees who executed it, for the benefit of their co-legatees: Barton *v.* Hassard, 3 Dr. & W. 461.

(*p*) Fosbrooke *v.* Balguy, 1 M. & K. 226. 3 Sug. V. & P. 271, 10th edit.

(*q*) See *ante*, p. *1707.

(*r*) Adye *v.* Feuilleteau, 1 Cox, 24.

(*s*) Piety *v.* Stace, 4 Ves. 622. Crosskill *v.* Bower, 32 Beav. 86.

† See note 3 on p. *1759 *ubi infra*.

in omitting to lay out the money for the benefit of the estate: 2nd. That he himself has made use of the money, or has committed some other *misfeasance*, to his own profit and advantage (*t*).

1st. With respect to neglect on the part of the executor in not laying out balances, it must be observed, that it frequently may be necessary and justifiable for an executor to keep large sums in his hands to answer the exigency of the testator's affairs (*u*), especially in the course of the first year after the decease of the testator; in which case such necessity is so fully acknowledged, that according to the ordinary course of the court, the fund is not considered distributable until after that time (*z*). But if the court observes that an executor keeps money dead in his hands without any apparent reason or necessity, then it becomes negligence, and a breach of trust, and the court will charge the executor with interest (*a*). And it seems, that outstanding demands, even on probable grounds, are no reason why the executors should not lay the testator's money out (*b*). But an executor shall not be charged with interest *for a balance in his hands, retained under a fair apprehension of his right to it (*c*).

(*t*) Rocke *v.* Hart, 11 Ves. 59, 60. Tebbs *v.* Carpenter, 1 Madd. 306, 307. Kildare *v.* Hopson, 4 Bro. P. C. 550, Toml. edit. Lincoln *v.* Allen, 4 Bro. P. C. 553, Toml. edit. Ashburnham *v.* Thompson, 13 Ves. 401.

(*u*) See Dawson *v.* Massey, 1 Ball & B. 231.

(*z*) Forbes *v.* Ross, 2 Cox, 115, 116, by Lord Thurlow.

(*a*) Littlehales *v.* Gascoyne, 3 Bro. Ch. C. 73. Brown *v.* Southouse, 3 Bro. Ch. C. 108. Franklin *v.* Frith, 3 Bro. Ch. C. 433. Hall *v.* Hallett, 1 Cox, 134. Seers *v.* Hind, 1 Ves. 294. Longmore *v.* Broom, 7 Ves. 124. Ashburnham *v.* Thompson, 13 Ves. 401. Turner *v.* Turner, 1 Jac. & W. 39. Goodchild *v.* Fenton, 3 Y. & Jerv. 481. Stafford *v.* Fiddon, 23 Beav. 386. Johnson *v.* Prendergast, 28 Beav. 480. In order to give a claim for interest, there must be a clear case of improper retention of balances to a considerable or substantial amount: Jones *v.* Morrall, 2 Sim. N. S. 241, 252. See also Davenport *v.* Stafford, 14 Beav. 319. The executors may be charged with interest on balances, though not claimed by the bill: 1 Jac. & W. 39. See Jones *v.* Morrall, 2 Sim. N. S. 241.

(*b*) Franklin *v.* Frith, 3 Bro. Ch. C. 434. 1 Madd. 305. It was resolved by Sir Joseph Jekyll, in Taylor *v.* Gerst, Mosely, 99, that if money placed out at interest be called in by the executor without any cause, he shall pay interest for it: But in Newton *v.* Bennet, 1 Bro. Ch. C. 361, Lord Thurlow said that an executor had an honest discretion to call in a debt bearing interest, if he thought the same in hazard. It should seem that he ought to lay it out again immediately in the Three per Cents., or other authorized security.

(*c*) Bruere *v.* Pemberton, 12 Ves. 386. So as to money paid away under a mistake as to the legal right to it: Saltmarsh *v.* Barrett, 31 Beav. 349. But in the late case of Re Hulkes, 33 C. D. 552, this decision, viz., that executors who, acting *bona fide*, have distributed

[*1751]

As to the rate of interest which the executor shall pay, the rule appears to be, that in those cases, where negligence alone is imputable to him, he shall be charged only with 4*l.* per cent. in respect of the balances, which he ought to have laid out, either in compliance with the express directions of the will, or from his general duty, where the will is silent on the subject (*d*). In order to induce the court to charge the executor with more than 4*l.* per cent. a special case is necessary (*e*).

rate of interest.

But 2ndly. Where there has been a direct breach of trust, *the executor may be charged with a higher rate of interest. With respect to employing the assets to his own advantage, Lord Hardwicke, on two occasions (*f*), expressed an opinion that an executor might do so without impropriety, and without being liable to any charge for interest. But this doctrine has been entirely overruled by more modern cases (*g*). And it is now established, that if the executor makes use of the money, he ought to pay the interest he made (*h*); upon the principle just above considered, that he ought not to derive any profit from the trust property (*i*). Hence it has become a settled rule that if a trustee, having trust money in his hands, knowingly applies it to his own use, or in his trade, he shall be charged with interest at the rate of 5*l.* per cent. (*k*). If the fund is employed in trade, the *cestuis que trustent* have a right to an option of taking either

the assets upon what turns out to be an erroneous construction of the will are not liable to be charged with interest upon the principal sums wrongly paid, which must be refunded to the estate, was dissented from by Chitty, J., as departing from the principle established in Atty.-Gen. *v.* Köhler, 9 H. L. C. 654, and Atty.-Gen. *v.* Alford, 4 De G. M. & G. 843. An administrator *pendente lite* is not liable to pay interest upon a balance in his hands during the pendency of the suit in the Ecclesiastical Court: Gallivan *v.* Evans, 1 Ball & B. 191. The court will not charge an executor, who has been guilty of delay in accounting, with interest on arrears of income unpaid by him: Blogg *v.* Johnson, L. R. 2 Ch. 225.

(*d*) Dornforth *v.* Dornforth, 12 Ves. 130, note (29), 2nd edit. S. C. cited 1 Madd. 302. Ashburnham *v.* Thompson, 13 Ves. 401. Rocke *v.* Hart, 11 Ves. 58, 60, 61. Tebbs *v.* Carpenter, 1 Madd. 307. Sutton *v.* Sharp, 1 Russ. Ch. C. 151. Melland *v.* Gray, 2 Coll. 295. Re Hulkes, 33 C. D. 552.

(*e*) Tebbs *v.* Carpenter, 1 Madd. 290, 306. Mousley *v.* Carr, 4 Beav. 49. Hosking *v.* Nicholls, 1 Y. & Coll. Ch. C. 478, 480. See De Cordova *v.* De Cordova, 4 App. Cas. 692.

(*f*) Adams *v.* Gale, 2 Atk. 106. Child *v.* Gibson, 2 Atk. 603.

(*g*) Perkins *v.* Baynton, 1 Bro. Ch. C. 375. Newton *v.* Bennet, 1 Bro. Ch. C. 361. Forbes *v.* Ross, 2 Bro. Ch. C. 439. Tebbs *v.* Carpenter, 1 Madd. 304.

(*h*) Forbes *v.* Ross, 2 Cox, 116. Rocke *v.* Hart, 11 Ves. 60.

(*i*) *Ante*, p.*1744.

(*k*) Mousley *v.* Carr, 4 Beav. 49.

the interest or the profits which have arisen from the trade (*l*): but they must elect to take either the profits for the whole period, or the interest for the whole period (*m*). *If it be shown that the executor used the property in his trade, and the amount of the profits made by him does not appear, the court takes it for granted that he made 5*l.* per cent. at the least, and it is incumbent on him to show that he made less (*n*). It has been further established, that if an executor or other trustee mixes trust funds with his private moneys, and employs them both in a trade or adventure of his own, the *cestui que trust* may, if he prefers it, insist upon having a proportionate share of the profits, instead of interest on the amount of the trust funds so employed (*o*). And it should seem to be now settled, that an executor, who, being a trader, and having, of course, an account with a banker, places the assets at his banker's in his own name, by that means increases the balances in his favor, acquiring additional credit, and enjoying in his business the advantages naturally arising from that circumstance, must be considered as having employed the money for his own benefit, and must, therefore, be charged with interest at 5*l.* per cent. (*p*).

(*l*) Burden *v.* Burden, cited 1 Jac. & Walk. 134. Wedderburn *v.* Wedderburn, 22 Beav. 100. *Ante*, p.*1744.

(*m*) Heathcote *v.* Hulme, 1 J. & W. 122. In Vyse *v.* Foster, L. R. 8 Ch. 309, 334, which was a case in which a daughter of the testator, a beneficiary under the will, was asking for an account of profits, having been credited with interest at 5 per cent. on her share of trust moneys, which consisted of the ascertained share of the testator left in breach of trust in the business in which he had been a partner, James, L.J., says: "It has been distinctly laid down that a plaintiff cannot claim both interest and profits in respect of the money employed in trade, but must elect between them, and it might be a grave question whether the plaintiff must not either adopt or repudiate the terms on which the successive partnerships were willing to hold her money. If she repudiate the arrangement, it might be considered that she would have to elect between interest and that share only of the profits made in respect of her capital which actually came into the hands of her trustees, as appears to have been held in Jones *v.* Foxall, 15 Beav. 388. The application, however, of that rule as to election between interest and profits to the case of an actual loan by a trustee in breach of trust to himself and others, would, we think, require very full consideration before the Court came to a final decision on it."

(*n*) Rocke *v.* Hart, 11 Ves. 61. It should seem, that interest shall in no case be charged at less than 5*l.* per cent., when the fund has been embarked in trade without authority: Heathcote *v.* Hulme, 1 J. & W. 134, 135. See also Robinson *v.* Robinson, 1 De G. M. & G. 257, by Lord Cranworth.

(*o*) Docker *v.* Somes, 2 M. & K. 655. Wedderburn *v.* Wedderburn, 2 Keen, 722. 4 My. & Cr. 41. Willett *v.* Blanford, 1 Hare, 253. Portlock *v.* Gardner, 1 Hare, 594, 603.

(*p*) Treves *v.* Townshend, 1 Bro. Ch. C. 385. Rocke *v.* Hart, 11 Ves. 61. Sut-

[*1753]

*There are many other cases where executors, who have applied the assets in direct dereliction of their duty, have been charged with 5*l.* per cent. interest. Thus in Forbes *v.* Ross (*q*), there was an express trust, by a direction in the will, to lay out the fund in the purchase of lands, or upon heritable or personal securities, at such a rate of interest as the executors should think reasonable; so that they were at liberty, using their discretion soundly and fairly and honestly, to lend it to anybody that they might suppose would give a reasonable interest for it, considering at the same time the degree of responsibility of the person to whom it was lent: they lent the fund to one of themselves, on bond at 4*l.* per cent., when 5*l.* per cent. might have been made by heritable or government securities: And it was held, that he should be charged with 5*l.* per cent. interest. So in Piety *v.* Stace (*r*), the will directed the executor to place the money in the public funds or upon mortgages or other good securities, and to pay the dividends and interest to certain persons for life, and after their death to dispose of the capital in a certain mode: The executor called in part of the property which was out on security, used it generally in his trade, and in various transactions in the public funds, paying only the dividends of the stock to the persons entitled under the will, and he lent part to his son: And Lord Alvanley directed an account of all the executor had made, with the interest at the rate of 5*l.* per cent. upon the balances in his hands. In Pocock *v.* Reddington (*s*), the executor and trustee having been guilty of a breach of trust by selling out stock and dealing improperly with the money, Lord Alvanley held that the *cestui que trust* had an option to have the stock replaced or the money produced by the sales, with interest at 5*l.* per cent. or more, if more had been made by it, and the costs occasioned by the executor's misconduct (*t*) In *Mosley *v.* Ward (*u*), an executor in trust for infants, unnecessarily calling in the property, out upon good security at 5*l.* per cent., except a small part, keeping large

ton *v.* Sharp, 1 Russ. Ch. C. 151, 152. Re Jones, 49 L. T. 91. Although the will authorized the executor to invest the residue on "good private securities:" Westover *v.* Chapman, 1 Coll. 177. See also Re Hilliard, 1 Ves. 90. Melland *v.* Gray, 2 Coll. 295. Williams *v.* Powell, 15 Beav. 461. But see *contra*, Perkins *v.* Baynton, 1 Bro. Ch. C. 375. Brown *v.* Southouse, 3 Bro. Ch. C. 107. See Burdick *v.* Garrick, L. R. 5 Ch. 223, as to what is employment of money in business.

(*q*) 2 Cox, 113. S. C. 2 Bro. Ch. C. 430.

(*r*) 4 Ves. 620.

(*s*) 5 Ves. 794.

(*t*) See also Bate *v.* Scales, 12 Ves. 402.

(*u*) 11 Ves. 581.

[*1754] [*1755]

balances in his hands, and using it as his own, was ordered by Lord Eldon to be charged with interest at 5*l.* per cent. and costs. In Bick *v.* Motley (*x*), the master found that two executors had, by signing joint checks, enabled each other to receive sums belonging to the estate of their testatrix, when they were both largely indebted to that estate: and that the sums so received by them were debts provable under their respective commissions; both executors having become bankrupt: Sir C. Pepys, M.R., said, that as, in respect of such sums, the executors had each committed a *devastavit*, each was chargeable, according to the uniform practice of the court, with interest at 5*l.* per cent. upon the sums which he had enabled his co-executor to receive: And his Honor accordingly made an order, that interest at that rate should be added to the principal sums to be proved against the bankrupts' estates respectively (*y*). In Jones *v.* Foxall (*z*), and Williams *v.* Powell (*a*), Romilly, M.R., stated the rule as established by the authorities, that if an executor has retained balances in his hands, which he ought to have invested, the court will charge him with simple interest at 4*l.* per cent. on the balances; but if in addition to such retention he has committed a direct breach of trust, or been guilty of misconduct, he will be charged after the rate of 5*l.* per cent. (*b*).

But in the later case of The Attorney-General *v.* Alford (*c*), *Lord Cranworth, C., said he could not understand the principle on which the court can proceed *in pœnam* to punish the executor for his misconduct by making him account for more interest than he has received: and his lordship stated his opinion to be, that the court ought, in the case of an executor who has money in his hands which he ought to invest and does not invest, to charge him only with the interest which he has received, or which the court is justly entitled to say he ought to have received, or which it is so fairly to be presumed that he did receive, that he is estopped from saying that he did not

(*x*) 2 M. & K. 312.

(*y*) See also Munch *v.* Cockerell, 9 Sim. 339, 351; confirmed as to charging the trustees with interest at 5*l.* per cent., by Lord Cottenham, 5 M. & Cr. 178, 220.

(*z*) 15 Beav. 388.

(*a*) 15 Beav. 461.

(*b*) See also the rule stated by the same judge in Knott *v.* Cottee, 16 Beav. 80.

(*c*) 4 De Gex, M. & G. 483, 851, 852. Burdick *v.* Garrick, L. R. 5 Ch. 233, 241. The principle, established in the above case of Atty.-Gen. *v.* Alford, and also in that of Atty.-Gen. *v.* Köhler, 9 H. L. C. 654, was approved of in the late case of Re Hulkes, 33 C. D. 552. *Ante*, p. *1751, note (*c*).

[*1756]

receive it: and the learned judge added, that misconduct did not seem to him to warrant the conclusion that the executor did in point of fact receive, or is estopped from saying that he did not receive, the interest, or that he is to be charged with anything he did not receive, if it is not misconduct contributing to that particular result: And his lordship proceeded to hold (varying a decree of Stuart, V.-C.) (*d*), that an executor who for several years had retained funds in his hands uninvested, which he ought to have invested, was chargeable only with simple interest at 4*l.* per cent., there being no circumstance to lead to the conclusion that he had made any profit by his misconduct: If indeed it had appeared that he had improperly used the money for his own purposes, the court would not inquire what had been the actual proceeds of his speculation, but would infer he either did make 5*l.* per cent., or ought to be estopped from saying that he did not (*e*).

Instances of compound interest.

As a general rule, the court decrees the computation of simple interest to be made (*f*). But there are instances in *which an executor has been charged with compound interest. Thus in Raphael *v.* Boehm (*g*), a legacy was given to the executor, with a declaration in the will, that such a legacy should be in full for the trouble he might have in performing the duties of the will, and that he should not have any claim for commission, or derive any advantage from keeping in his possession any sums of money, without duly accounting for the legal interest thereof: The testator then disposed of the residue upon certain trusts for his children, and directed that a sufficient part of the interest of the portions should be applied to the maintenance, &c., of each child, and the surplus should be accumulated: the executor did not lay the money out as directed, but kept upward of 30,000*l.* in his hands, and used it in his trade, so that there was a willful violation of the will, which prohibited retainer and directed accumulation: And Lord Loughborough decreed, that an account should be taken from the moment of the testator's death, and interest be charged upon all the

(*d*) 2 Sm. & G. 488.

(*e*) See *Accord.* Mayor of Berwick *v.* Murray, 7 De G. M. & G. 497, 519, in which case Lord Cranworth said that it was a mistake to suppose that he had laid it down in The Atty.-Gen. *v.* Alford, that a defaulting trustee could never be charged with more than 4*l.* per cent. And see Vyse *v.* Foster, L. R. 8 Ch. 309, 333.

(*f*) Robinson *v.* Cumming, 2 Atk. 410.

(*g*) 11 Ves. 92. 13 Ves. 407, 590.

[*1757]

sums received, and rests to be made half-yearly upon the balance, including intermediate interest: so that double compound interest was given: The cause came on afterward before Lord Eldon, upon exceptions to the master's report, and though his lordship did not approve of the decree, yet he agreed in the propriety of giving compound interest. So in Knott *v.* Cottee (*h*), where there was an express trust for accumulation, Romilly, M.R., held that, though the circumstances were not such as to make it right to charge the executor with more than 4*l.* per cent. interest on moneys which he had improperly invested, yet it was a case for annual rests. And other instances, where, in executors' accounts, interest has been given with rests, will be found in the cases cited in the note below (*i*). And it has been *held bv Romilly, M.R., on two occasions (*k*), that if an executor employs the assets in trade or speculation, for his own benefit, he shall be charged either with the profits actually so obtained by him for the use of the money, or with compound interest at 5*l.* per cent.

His Honor, however, observed, that the principle on which executors have been charged with compound interest has not been clearly defined, nor are the decided cases by any means free from obscurity or contradiction. The principle of some of them seems to have been, that the court ought to visit the executor as it were with a penalty, when he has not merely misconducted himself, but has derived, or tried to derive, a profit for himself from the use of the money. And it has not unfrequently been said, that in order to make out a claim for compound interest, a very strong case of violation of duty is required (*l*). But there has already been occasion to mention that, in the latest case on this subject (*m*), Lord Cranworth repudiated the doctrine of *punishing* the executor, and maintained the principle, with respect to compound as well as simple interest, that the court ought to charge him only with the interest which he has received, or which the court is justly entitled to say he ought to have received, or to presume he did receive.

(*h*) 16 Beav. 77.

(*i*) Stackpoole *v.* Stackpoole, 4 Dow, 209. Willson *v.* Carmichael, 2 Dow & Clark, 58. Walker *v.* Woodward, 1 Russ. Chanc. Cas. 107. Townend *v.* Townend, 1 Giff. 201. Walrond *v.* Walrond, 29 Beav. 586. See also, on this subject, Binnington *v.* Harwood, 1 Turn. & R. 481, and Lord Brougham's judgment in Docker *v.* Somes, 2 M. & K. 655.

(*k*) Jones *v.* Foxall, 15 Beav. 388. Williams *v.* Powell, *ibid.* 461.

(*l*) See Crackelt *v.* Bethune, 1 Jac. & Walk. 586. Tebbs *v.* Carpenter, 1 Madd. 290.

(*m*) Atty.-Gen. *v.* Alford, *ante*, p. *1755.

[*1758]

It may here be observed, that a considerable difference of opinion has existed as to the effect of a direction to the master "to make annual rests" in taking the account: In Heighington *v.* Grant (*n*), Lord Langdale, M.R., after reviewing all the authorities, denied that a direction to ascertain balances, to compute interest on such balances, and "in taking the said accounts" to make annual rests, *followed by a direction that the party shall be charged with interest, "after the rate and in the manner aforesaid upon such balances," could, without more, be considered as a direction to charge the defendant with compound interest, as so much principal received into the account of the following year: And his lordship expressed his opinion that where compound interest is intended to be charged, a specific direction for that purpose should be given. But on appeal to Lord Cottenham, C., his lordship, in an elaborate judgment, arrived at a different construction of the direction in question, and held that, under it, the interest computed on the balance due at the end of the first year was to form part of the balance due at the end of the second year, and upon which interest was then to be computed, and so on from year to year to the end of the account (*o*).

(*n*) 5 M. & Cr. 258. (*o*) Heighington *v.* Grant, 5 M. & Cr. 258.

---

3. *Accounting—When necessary.* In the United States the duty of accounting, as well as the time and procedure, are all regulated by statute. Failure to account as constituting a breach of the administration bond has been already considered, Vol. I. p. 641. Where no estate comes to the hands of the personal representative, there is, of course, no necessity for filing an account. Estate of Hutchison, 9 Lanc. L. Rev. 24. And in some states, where the executor gives a bond as sole residuary legatee, it dispenses by statute with all further administration or accounting. Durfee *v.* Abbott, 50 Mich. 278. See also, Vol. I. p. 626, *ubi supra.* In such case even the sureties on the bond cannot file a bill for an account. McElroy *v.* Hatheway, 44 Mich. 399. But an executor will not be relieved from the duty of filing an account even where the will gives him discretion as to management without responsibility for losses. Estate of Harrison, 2 Pa. Dist. 108; or gives him the whole estate for life with absolute power of sale and management. Solomon *v.* Tarver, 79 Ga. 601. So, a release by the next of kin to the widow of the income of the entire estate will not excuse the administrator from accounting. Probate Court *v.* Hazard, 13 R. I. 1. And where a release by the next of kin to the administrator himself is alleged by him and denied by them, he will be required to account, and the sufficiency of the release may be inquired into on the accounting. Matter of Read, 41 Hun 95.

A formal account is necessary, although the estate may be less than the exemption of the administratrix

[*1759]

(as widow), Clement *v.* Riley, 29 S. C. 286; and although the administrator has declared the estate insolvent, Duncan *v.* Barnes, Spencer 75; or suits are still pending against the estate, Estate of Nicholson, 16 Phila. 267; or counter claims existing in favor of the executor. Matter of O'Connor, 47 N. Y. S. R. 415. On the other hand, it is a sufficient defense to allege a former final accounting. Matter of Hood, 90 N. Y. 512. But the defense must be taken by answer or demurrer, or it is deemed to be waived. Remington *v.* Walker, 21 Hun 322. And it must allege a settlement of account. Keyser *v.* Kelly, 4 Redf. 157. And the pendency of a former intermediate account is no defense to the statutory requirement of an annual account. *Ex parte* Pearce, 44 Ark. 509.

Accounting by successor. Where an executor dies pending proceedings for settlement, they abate, in New York, Matter of Smith, 1 How. Pr. N. S. 64; while in Mississippi it is the duty of his administrator to continue the accounting. Jarnagin *v.* Frank, 59 Miss. 393. But the attorney of an administrator cannot file his account after his death. Pickitt *v.* Pickitt, 41 La. An. 883.

Where an administrator dies without an account after filing an inventory, and his executor finds no assets of the original estate and settles the estate of his own testator, he need not account in the first administration, but claimants against that estate will take their place with general creditors of the deceased administrator. Matter of O'Brien, 45 Hun 284. But the administrator's own failure to settle the estate of his intestate will not dispense with his accounting for funds held by the intestate as administrator of another estate. Johnson *v.* Henagan, 11 S. C. 93. Under the statutes by which the estate of a deceased executor devolves not on his executor, but on an administrator *de bonis non*, his executor cannot be compelled to settle the account of the former estate, Reed *v.* Wilson, 73 Wis. 497; S. C. 75 Wis. 39. As to such estates see Vol. I. pp. 293, n., 561, n., *ubi supra.* Under the New York statute he can be required only to account for such funds of the first estate as have actually come into his possession. Matter of Fithian, 44 Hun 457; Le Count *v.* Le Count, 1 Dem. 29; Code C. P. § 2606. If he pays over the funds to his successor before the qualification of the latter, he will be entitled to credit in his accounts when the successor has qualified. Allen *v.* Schriver, 81 Va. 174. The administrator *de bonis non* cannot sue his predecessor or the estate of a deceased predecessor, until after demand made of him for the funds of the original decedent. State *v.* Hart, 57 Md. 234. And the administrator of a deceased administrator is entitled to have his estate settled before turning over the original estate to the successor in the administration. Foster *v.* Bailey, 157 Mass. 160. But after an executor's removal he may be compelled to account and to deliver the estate to his successor. Matter of Hood, 104 N. Y. 103. As to suits by the administrator *de bonis non* for unadministered assets, see Vol. II. p. 160, *ubi supra.* And as to actions by him on the administration bond, see Vol. I. p. 649, *ubi supra.*

In New York, an accounting cannot be instituted by the personal representatives of the deceased executor, but the proceedings must be at the instance of the administrator *de bonis non.* Estate of Ranney, 66 How. Pr. 291. So, where the executor of A. is cited to account as such, he cannot petition for leave to account for the administration of A, as executor of B. Crawford *v.* Craw-

ford, 5 Dem. 37. But an administrator *de bonis non* may require an accounting from representatives of the deceased administrator, Matter of Latz, 33 Hun 618; or executor, Perkins *v.* Caldwell, 77 N. C. 433; see too, Vol. II. p. 161, n., *ubi supra;* or from a retiring administrator. Waring *v.* Lewis, 53 Ala. 615. But to entitle him to an account from the representatives of the deceased administrator or executor it must appear that assets of the original estate have come to the hands of such representatives. Cross *v.* Baskett, 17 Oreg. 84. The settlement between an outgoing administrator and the administrator *de bonis non* is conclusive as to distributees in the absence of fraud. Waring *v.* Lewis, 53 Ala. 615. But a settlement of the administration of a deceased administrator before appointment of his administrator is not binding on his estate, State *v.* Drake, 52 Ark. 350; although the settlement was made with the consent of his executor (before letters issued). Stockton *v.* Ransom, 60 Mo. 535.

Separate accounts. Where there are distinct trusts in the will, the executor should file a separate account for each. Weeks *v.* Cornwell, 9 Civ. Pro. 28; Frame *v.* Willets, 4 Dem. 368. So, where he is executor and trustee under the same will. Estate of Morris, 16 Phila. 343; Estate of Felt, 13 Phila. 289. Before executors enter on their duties as trustees their account as executors should be fully closed, Bacon *v.* Bacon, 4 Dem. 5; and the executors directed to hold as trustees, Matter of Willets, 112 N. Y. 289; and thereby discharged as executors. Laytin *v.* Davidson, 95 N. Y. 263. If an administrator fails to settle his estate as such, and assumes to act as guardian, he must account for principal and income, although he claims to have used the estate to support the infant beneficiaries. Dowling *v.* Feeley, 72 Ga. 557. If the same person is executor of two estates which are in antagonism, he cannot get instruction from the court as to how to present his accounts. Matter of Solomons, 3 Dem. 307.

What the account should contain. The settlement of an administrator's account involves simply the adjudications of charges and debts and allowances, and should not include distribution and payment of legacies. Arnold *v.* Smith, 14 R. I. 217; Jones' Appeal, 99 Pa. St. 124. It should contain a clear statement of the accountant's dealings, Matter of Solomons, 3 Dem. 307; charging him with the property inventoried and crediting him with the debts and expenses paid, Bechtold *v.* Read, 4 Dick. (N. J.) 111; and see Liddell *v.* McVickar, 6 Halst. 44; and need not show the amount of the residuary estate. Bullard *v.* Benson, 1 Dem. 486. If there is a loss of part of the inventoried value, the inventoried value should be accounted for and credit asked for the loss. McCully *v.* Lum, 4 Dick. (N. J.) 552. The kind of money actually received must be accounted for, Magraw *v.* McGlynn, 26 Cal. 420; including the premium on gold coin received. Cunningham *v.* Cauthen, 37 S. C. 123; Estate of Moore, 95 Cal. 34; Fultz *v.* Brightwell, 77 Va. 742. On the other hand, the account should not include advancements, Black *v.* Whitall, 1 Stockt. 572; nor foreign assets which have not come to the hands of the accountant, Sherman *v.* Page, 85 N. Y. 123; nor debts of an insolvent nonresident, Black *v.* Whitall, *ubi supra;* nor proceeds of land received by him in his individual capacity, Matter of Brown, 5 Dem. 223; nor moneys obtained by the administrator by undue influence in the lifetime of the intestate from his guardian, Estate of Berryhill, 61 Ia. 345; or collected by him for the deceased in his lifetime as his agent. Eavenson's Appeal, 84 Pa. St. 172. And

if articles specifically bequeathed are not accounted for, the executor will be presumed to have delivered them to the legatee. Matter of Pollock, 3 Redf. 100.

Principal and income. In stating an account the principal and income should be stated separately. Estate of Evans, 11 Phila. 113. A mistake may be corrected, but where the life tenant was inadvertently allowed to misappropriate part of the principal given in remainder to his children, the amount so misappropriated cannot be charged by the trustee against the remainder. Dodd *v.* Winship, 144 Mass. 461. The income should include dividends declared after testator's death, Estate of Cassaday, 13 Phila. 365; Matter of Kernochan, 104 N. Y. 618; but those declared before his death belong to the principal, Matter of Kernochan, *ubi supra;* as also a privilege to take additional stock, Moss' Appeal, 83 Pa. St. 264; Biddle's Appeal, 99 Pa. St. 278; Matter of Kernochan, 104 N. Y. 618; or profits of partnership business derived from loans of the individual partners in excess of the legal interest on the amount loaned, Mudge *v.* Parker, 139 Mass. 153; or profits resulting from change of securities. Matter of Gerry, 18 Abb. N. C. 178. So, the loss of premium on United States bonds purchased by direction of the will for investment of trust funds falls on the principal, and not the income. Shaw *v.* Cordis, 143 Mass. 443; Farwell *v.* Tweddle, 10 Abb. N. C. 94. But if property is bought in by the executor for a debt due the estate, and is afterward sold for less than the principal and interest due, the loss falls on the interest, and not on the principal. Riggs *v.* Cragg, 26 Hun 89.

In general, interest of a trust fund must bear the current expenses of its administration, Butterbaugh's Appeal, 98 Pa. St. 351; such as taxes and repairs of the trust property, Outcalt *v.* Appleby, 9 Stew. (N. J.) 73. So, taxes and current interest, Hepburn *v.* Hepburn, 2 Bradf. 74; Estate of Burnett, 18 Phila. 387; but not assessments for improvements, Outcalt *v.* Appleby, *ubi supra;* nor arrears of interest due in the lifetime of the deceased. Hepburn *v.* Hepburn, *ubi supra.* Under a bequest of the net income the Probate Court may determine what part, if any, should be reserved. New England Trust Co. *v.* Eaton, 140 Mass. 532. And may even, in the interest of the life tenant, absorb an entire year's income for the payment of debts to save the principal of the estate. Merryman *v.* Long, 49 Md. 540. But the general administration expenses are payable out of the principal, where the entire income is bequeathed for life to the widow. Reynolds *v.* Reynolds, 3 Dem. 82.

Where the will directed that the widow should occupy the farm "free from charges," which were to be paid "out of the estate," they were still payable out of the general income to relieve the principal. Matter of Albertson, 113 N. Y. 434. But where the income is insufficient, directions to pay debts and support the family "out of the income" may be made good out of the principal. Shaffer *v.* Shaffer, 16 S. C. 625.

Interest. An administrator must account for all interest actually received, Oswald's Appeal, 3 Grant Cas. 300; State *v.* Mayhew, 4 Halst. 70; Williams *v.* American Bank, 4 Met. 317; and he will be charged with interest after a reasonable time if he fails to account for interest, Bentley *v.* Shreve, 2 Md. Ch. 215: especially where he has received interest and conceals the particulars as to the amount received. Smiley *v.* Smiley, 80 Mo. 44. If he has kept no account of the interest received on securities in hand, he may be charged with interest for the entire time he has

retained them. Jackson *v.* Shields, 87 N. C. 437. And he will be charged with compound interest, if he has received it, Jennison *v.* Hapgood, 10 Pick. 77; but not with usury or other compensation unlawfully exacted by him from the debtor. Gordon *v.* West, 8 N. H. 444.

Interest on debts due. An administrator or executor is charged with interest on his own debts to the estate, Calvert *v.* Holland, 9 B. Mon. 458; even during the first year after the testator's death, Clarke's Appeal, 2 Watts 405; although he has paid off debts of the estate which he claims to have been a satisfaction of his debt. Ackerman's Case, 13 Stew. (N. J.) 533.

But an executor is not chargeable with interest on debts of others until they are actually collected, Cavendish *v.* Fleming, 3 Munf. 198; especially if there is any doubt as to the ownership of the fund when collected. Dillard *v.* Tomlinson, 1 Munf. 183. In general, he is chargeable with interest on debts collected from the time of collection, Evans *v.* Smith, 84 N. C. 146; or, if he has kept no accounts, from the time the debt became due. Finch *v.* Ragland, 2 Dev. Eq. 137. So, where he has neglected to pay over income received as directed by the will, he will be charged with interest on the amount from the time when it should have been paid. Guthrie *v.* Wheeler, 51 Conn. 207.

Interest on funds retained. But a personal representative is not charged with interest on funds retained for any proper reason, Lund *v.* Lund, 41 N. H. 359; such as to meet contingencies, Wilson *v.* Wilson, 3 Gill & J. 20; Davis' Appeal, 23 Pa. St. 206; which he holds himself ready to pay, Burtis *v.* Dodge, 1 Barb. Ch. 77; or for the payment of debts, Minuse *v.* Cox, 5 Johns. Cas. 441; Jacot *v.* Emmett, 11 Paige 142; Pace *v.* Burton, 1 McCord Ch. 247; Lafont *v.* Ricaud, 1 Bail. Eq. 487; especially where the sums received are small and the debts large, Slade *v.* Slade, 10 Vt. 192; or for distribution. Johnson *v.* Holifield, 82 Ala. 123.

As a general rule, interest is not charged on funds retained by the executor pending settlement of the estate, unless they are detained unnecessarily or are used by him, Stearns *v.* Brown, 1 Pick. 530; Lamb *v.* Lamb, 11 Pick. 371; Boynton *v.* Dyer, 18 Pick. 1; Chase *v.* Lockerman, 11 Gill & J. 185; Wendell *v.* French, 19 N. H. 205; Commonwealth *v.* Mateer, 16 Serg. & R. 416; Wilson *v.* Lineberger, 88 N. C. 416; Knight *v.* Loomis, 30 Me. 204; Karr *v.* Karr, 6 Dana 3; Overstreet *v.* Potts, 4 Dana 188; Thompson *v.* Sanders, 6 J. J. Marsh. 94; especially where he has managed the estate without charge or commission, and held himself ready to pay out and account for the fund, Barclay *v.* Cooper, 15 Stew. (N. J.) 516; or where he has retained the fund because he was unable to invest it properly, Bartlett *v.* Fitz, 59 N. H. 502; and where the balance was ordinarily in his own favor against the estate. Mathews *v.* Bennett, 21 N. H. 199. The allowance of interest against the executor or administrator rests ordinarily in the discretion of the court, Pettus *v.* Clawson, 4 Rich. Eq. 92; and depends on the facts of the particular case, Field *v.* Colton, 7 Bradw. 379; and not on the mere existence of a balance in hand. Johnson *v.* Eicke, 7 Halst. 316.

Interest for delay in settlement. Interest may be charged against the personal representative for delay in the final settlement of his account, Clark *v.* Hughes, 71 Ala. 163; without excuse, May *v.* Green, 75 Ala. 162; and for an unreasonable time, Eubank *v.* Clark, 78 Ala. 73; especially if he has kept no account and files no statement of account, Pickens *v.* Miller, 83 N. C. 543; although permitted by order of

the court to retain a sum for certain purposes, he may become chargeable with interest for prolonged neglect and delay. Lyles *v.* Hatton, 6 Gill & J. 122. So, if he retains funds for many years without accounting, Estate of Christie, 1 Tuck. 81; Comegys *v.* State, 10 Gill & J. 176; Estate of Schofield, 99 Ill. 513; or even after the statutory year allowed for settlement. Estate of Seligman, Myrick's Prob. 8. But he will not be charged with interest in favor of next of kin who are in equal default, Forward *v.* Forward, 6 Allen 494; especially where the settlement has been delayed by litigation, Clark *v.* Gerard, 73 Ala. 456; or pending exceptions to the account. Hoopes *v.* Brinton, 8 Watts 73; Dietrich *v.* Heft, 5 Pa. St. 91. So too, as to guardians. McElhenny's Appeal, 49 Pa. St. 347. See, however, Yundt's Appeal, 13 Pa. St. 575. And he is not charged for interest on moneys received pending an intermediate accounting, Trust Co. *v.* Bixby, 2 Dem. 464; such funds being left for consideration in a subsequent account. Belcher *v.* Branch, 11 R. I. 226.

Interest for delay in distribution. An administrator may be charged with interest on a distributable fund, although the minor distributees were without guardian and the account was long in litigation. Flintham's Appeal, 11 Serg. & R. 16. The infancy of the legatee is no excuse. Bitzer *v.* Hahn, 14 Serg. &. R. 232. So, the want of a guardian has been held to be of itself no excuse for delaying the distribution. Sanderson *v.* Sanderson, 20 Fla. 292. But see, *contra*, Sparhawk *v.* Buell, 9 Vt. 41; Cavendish *v.* Fleming, 3 Munf. 198. And if a legacy payable to the legatee at the age of twenty-one with accumulated interest is converted by the executor, he will be charged with the accumulations and compound interest after the majority of the legatee. McKim *v.* Hibbard, 142 Mass. 422.

But where the executor holds a fund for the legatee, he will not be charged with interest if he has not used the fund or mingled it with his own, Lake *v.* Park, 4 Harr. (N. J.) 108; as in the case where the delay was due to the fact that some of the next of kin could not be ascertained. Roper *v.* Burton, 107 N. C. 526. But he will be charged with interest where he has not had the fund ready for distribution, Estate of Kline, 8 Lanc. L. Rev. 356; and has made no provision for it for a long period of years. Salisbury *v.* Colt, 12 C. E. Gr. 492. A fund belonging to an absent distributee should be kept one year and then invested, and an executor will be liable for interest for failure to do so, Walthour *v.* Walthour, 2 Grant Cas. 102; especially where the will directed that the fund be put at interest to pay the legacies. Adams *v.* Spaulding, 12 Conn. 350. The representatives of a legatee do not lose their right to interest by a prolonged absence of many years, raising a presumption of his death, and their failure for many years to take out letters and apply for the legacy. Bourne *v.* Meehan, 1 Gratt. 292. So, an executor will be charged with interest on income retained after it is due to a legatee, Lathrop *v.* Smalley, 8 C. E. Gr. 192; or on arrears of annuity, Bowles *v.* Drayton, 1 Desaus. 489; or on interest directed to be accumulated for the legatee until his majority. Miller *v.* Congdon, 14 Gray 114.

Interest for failure to invest. Executors are chargeable with interest for negligence to invest funds which are properly subject to investment, Williamson *v.* Williamson, 6 Paige 298; De Peyster *v.* Clarkson, 2 Wend. 77; Estate of Verner, 6 Watts 250; Fox *v.* Wilcocks, 1 Binn. 194; King *v.* Berry, 2 Gr. Ch. 261; Frey *v.* Frey, 2 C. E. Gr. 71; Pickens *v.* Miller, 83 N. C. 543; Duncan *v.* Dent, 5 Rich. Eq. 7; Garnett *v.* Carr, 3 Leigh 407; especially

where the amounts are large, Estate of Evans, 11 Phila. 113; and retained for a long time, Estate of Lloyd, 82 Pa. St. 143; and in disregard of express directions of the will, Handly *v.* Snodgrass, 9 Leigh 484; and actually withdrawn by the executor from the general fund, Eliott *v.* Sparrell, 114 Mass. 404; and used for his individual purposes. Gilman *v.* Gilman, 6 Lans. 1. They may be charged with interest before the end of the first year, if the funds are unnecessarily retained, Brandon *v.* Hoggatt, 32 Miss. 335; or after the expiration of a reasonable time to invest, Luken's Appeal, 47 Pa. St. 356; or after six months from the receipt of the moneys, Dunscomb *v.* Dunscomb, 1 Johns. Ch. 508; or after six months from receipt on moneys received after the end of the first year. Estate of Merrick, 1 Ashm. 305. They are not chargeable, if the funds are retained for the purposes of the administration, Burnside *v.* Robertson, 28 S. C. 583; McCaw *v.* Blewit, 1 Bail. Ch. 98; Miller *v.* Beverleys, 4 H. & Munf. 415; Griswold *v.* Chandler, 5 N. H. 492; Taveau *v.* Ball, 1 McCord Ch. 456; but are chargeable if they create a fund unnecessarily by a deposit to meet expenses. Spaulding *v.* Wakefield, 53 Vt. 660.

In general, the executor will be charged with interest on his annual balances. Burwell *v.* Anderson, 3 Leigh 348; Estate of McCall, 1 Ashm. 357; Koon *v.* Munro, 11 S. C. 139; Pettus *v.* Clawson, 4 Rich. Eq. 92; Jordan *v.* Hunt, 2 Hill Ch. 145; Walker *v.* Bynam, 4 Desaus. 555; Rowland *v.* Best, 2 McCord Ch. 317; unless necessarily kept for purposes of the estate, Darrell *v.* Eden, 3 Desaus. 241; and unless the amounts are small, Woods *v.* Garnett, 6 Leigh 271; in which case he will not be charged, whether he has used the funds, Rapalje *v.* Norsworthy, 1 Sandf. Ch. 399; or not. Myers *v.* Myers, 98 Mo. 262. But commissions are not to be deducted before charging interest on such balances. Vanderheyden *v.* Vanderheyden, 2 Paige 287; Mathis *v.* Mathis, 3 Harr. (N. J.) 59.

Interest for use of funds. Where the executor uses the funds for his own purposes or mingles them with his own, he is, in general, chargeable with interest, Kellett *v.* Rathbun, 4 Paige 102; Brown *v.* Ricketts, 4 Johns. Ch. 303; Manning *v.* Manning, 1 Id. 527; Estate of Dyott, 2 Watts & S. 557; Aldridge *v.* McClelland, 9 Stew. (N. J.) 288; Mathis *v.* Mathis, 3 Harr. (N. J.) 59; Estate of Verner, 6 Watts 250; Patterson *v.* Nichol, Id. 379; Gilbert's Appeal, 78 Pa. St. 266; Clawson's Appeal, 84 Pa. St. 51; Estate of Kline, 8 Lanc. L. Rev. 356; Powell *v.* Powell, 10 Ala. 900; Ivey *v.* Coleman, 42 Id. 409; Rogers *v.* Tullos, 51 Miss. 685; Powell *v.* Cooper, 42 Miss. 221; Matter of Herterman, 73 Cal. 545; Merrifield *v.* Longmire, 66 Cal. 180; especially where settlement is delayed, Matter of Hilliard, 83 Cal. 423; or accounting refused. Myers *v.* Myers, 2 McCord 214. If he uses the fund, he will be charged with interest, although he might properly have held the fund idle for the purposes of the estate. Ogilvie *v.* Ogilvie, 1 Bradf. 356; Findley *v.* Smith, 7 Serg. & R. 264. If he uses the money or mingles it with his own, he will be liable for interest whether he is ready to pay it over at the proper time, Estate of Clark, 53 Cal. 355; or not, Jacob *v.* Emmett, 11 Paige 142; although the contrary has been held, where he was always ready to pay it over. Beverleys *v.* Miller, 6 Munf. 99. Where he has held the fund in cash for several years, he will be charged with the interest, on the presumption that he has made use of it, Hasler *v.* Hasler, 1 Bradf. 248; especially where he refuses to account, Armstrong *v.* Walker, 150 Pa. St. 585; and in the absence of a

sworn denial. Ivey *v.* Coleman, 42 Ala. 409. So, it is equivalent to use of the funds if he deposits them in his own bank account and procures a discount on the strength of the deposit. Estate of Prescott, 1 Tuck. 430. If he mingles or uses the fund as his own, he will be charged with interest from the receipt of the money, Garniss *v.* Gardner, 1 Edw. Ch. 128; Estate of Hood, 1 Tuck. 396; Arnett *v.* Linney, 1 Dev. Eq. 369; Estate of Stott, Myrick's Prob. 168; or from the time of mingling it with his own. Smith *v.* Combs, 4 Dick. (N. J.) 420. So, if he purchases property of the estate and enjoys it and gives a receipt for the purchase money, Commonwealth *v.* Mateer, 16 Serg. & R. 416; or transfers property of the estate to himself. Jameson *v.* Shelby, 2 Humph. 198.

Compound interest. In general, an executor or administrator will not be charged with compound interest if he has acted in good faith, Freeman *v.* Freeman, 4 Redf. 211; and with the acquiescence of the next of kin, Matter of Kennedy, 30 N. Y. S. R. 215; S. C. 2 Connoly 216; but only in case of gross delinquency, Tucker *v.* McDermott, 2 Redf. 321; Ackerman *v.* Emott, 4 Barb. 626; Smith *v.* Kennard, 38 Ala. 695; although he should have put out the fund or paid it over, English *v.* Harvey, 2 Rawle 305; and has neglected to file his account, Bryant *v.* Craig, 12 Ala. 354; and although the court has made an order for payment of the fund. Matter of Lawrence, 2 Connoly 53. So, he will not be charged with compound interest for neglect to get possession of the real property held adversely if there are no funds for suit and no profits have been received by him. Wheeler *v.* Bolton, 92 Cal. 159.

But compound interest will be charged against him where he has been guilty of great delay in accounting, Estate of Sanderson, 74 Cal. 199 · rests being made and interest compounded every three years, Moor *v.* Beauchamp, 5 Dana 70; or every six years. Fall *v.* Simmons, 6 Ga. 265; Kenan *v.* Hall, 8 Ga. 417.

So, an executor or trustee will be charged with compound interest where he has used the funds and not accounted for the profits, Hook *v.* Payne, 14 Wall. 252; Barney *v.* Saunders, 16 How. 535; McKnight *v.* Walsh, 9 C. E. Gr. 498; Berwick *v.* Halsey, 4 Redf. 18; Peyton *v.* Smith, 2 Dev. & B. Eq. 325; Merrifield *v.* Longmire, 66 Cal. 180; Winder *v.* Diffenderfer, 2 Bland 166; Troup *v.* Rice, 55 Miss. 278; being charged in such case the highest rate of interest compounded. Williams *v.* Petticrew, 62 Mo. 460. But see Cruce *v.* Cruce, 81 Mo. 676. Where he has used the fund for many years, the interest will be compounded in annual rests, although he was ready to pay over the fund when required. Estate of Clark, 53 Cal. 355. So, if a trustee mingles with his own and uses the trust funds and has made more than simple interest, Utica Insurance Co. *v.* Lynch, 11 Paige 520; or uses the funds and refuses to disclose the profits made. McKnight *v.* Walsh, 9 C. E. Gr. 498; Schieffelin *v.* Stewart, 1 John. Ch. 620; Swindall *v.* Swindall, 8 Ired. Eq. 285; or speculates with the funds and refuses to account, Diffenderfer *v.* Winder, 3 Gill & J. 311; or speculates and makes no account for ten years, Johnson *v.* Hedrick, 33 Ind. 129; or claims the fund adversely, and refuses to account for its use, and fails to disprove fraud. Jennison *v.* Hapgood, 10 Pick. 77. But where he has used the fund and charged himself with interest on the money used, he will not be charged with compound interest in the absence of evidence showing that the profits received by him have exceeded the interest charged. Gilman *v.* Gilman, 2 Lans. 1

An executor will be charged compound interest where he has retained the amount of a legacy for many years without investment, and with no provision for interest or payment, Salisbury *v.* Colt, 12 C. E. Gr. 492; Voorhees *v.* Stoothoff, 6 Halst. 145; or has invested the fund and received and appropriated the income, Malo *v.* Williams, 3 Dick. (N. J.) 33, and he may be charged with simple interest as executor, and afterward with compound interest as guardian of the legatee. Hodge *v.* Hawkins, 1 Dev. & B. Eq. 564. So, compound interest may be charged for making improper investments, Sanderson *v.* Sanderson, 17 Fla. 820; or for mingling trust funds and not rendering account of investments, Spear *v.* Tinkham, 2 Barb. Ch. 211; especially where the will directed investment of the fund, Remington *v.* Walker, 99 N. Y. 626; Eliott *v.* Sparrell, 114 Mass. 404; Hough *v.* Harvey, 71 Ill. 72; Voorhees *v.* Stoothoff, 6 Halst. 145; or provided for accumulation of the interest, Perine *v.* Petty, 7 Stew. (N. J.) 193; McKim *v.* Hibbard, 142 Mass. 422; and required annual accounts. Voorhees *v.* Stoothoff, 6 Halst. 145; Hough *v.* Harvey, 71 Ill. 72.

Interest will generally be compounded with annual rests. Remington *v.* Walker, 99 N. Y. 626; Eliott *v.* Sparrell, 114 Mass. 404; Voorhees *v.* Stoothoff, 6 Halst. 145. The court may, however, direct a biennial rest, Smith *v.* Lampton, 8 Dana 69; and the circumstances of the particular case will, in general, provide the rule for that case. Thus, in a case where a trust fund was created with accumulation of interest for minor children, and payment of the several shares as the children arrived at maturity, and the fund was converted by the trustee to his own use, he was charged with compound interest on the several shares from the time when they should have been paid. McKim *v.* Hibbard, 142 Mass. 422.

Rate of interest. The rate of interest to be exacted from trustees for their neglect to make seasonable investments depends upon the circumstances of each case, and cannot be determined by any unvarying rule. Morgan *v.* Morgan, 4 Dem. 353. Thus, he is not chargeable with seven per cent. on money deposited at four or five per cent., unless it appears that with reasonable diligence more interest might have been obtained. Shuttleworth *v.* Winter, 55 N. Y. 624. But if he has employed the fund in his own business, he is liable for the highest rate of interest. Matter of Davis, 62 Mo. 450; Williams *v.* Petticrew, Id. 460; Morgan *v.* Morgan, 4 Dem. 353; *e. g.*, for ten per cent. (not, however, compounded). Cruce *v.* Cruce, 81 Mo. 676.

Interest—Payments credited. If the administrator has not unnecessarily retained the moneys of the estate, he will be allowed in his accounts for interest actually paid on claims, Billington's Appeal, 3 Rawle 48; Benagh *v.* Turrentine, 60 Ala. 557; but not if he has negligently and needlessly allowed the claim to remain unpaid, Callaghan *v.* Hall, 1 Serg. & R. 24; nor if he allowed interest improperly on an open account, Matter of Strickland, 1 Connoly, 435; or has paid more than legal interest. Estate of Dunne, 58 Cal. 543. And he will not be allowed interest on advances for the payment of debts made necessary by turning over the assets prematurely to the life tenant. McGougan *v.* Hall, 21 S. C. 600.

Profits. The trust estate is entitled to all profits which are made with its funds by an executor, Haberman's Appeal, 101 Pa. St. 329; Voorhees *v.* Stoothoff, 6 Halst. 145; Johnson *v.* Kay, 8 Humph. 142; Whitney *v.* Peddicord, 63 Ill. 249; or trustee.

Barney *v.* Saunders, 16 How. 535; Blauvelt *v.* Ackerman, 5 C. E. Gr. 148; Staats *v.* Bergen, 2 C. E. Gr. 554; Myers *v.* Myers, 2 McCord 214; or guardian, Martin *v.* Rayborn, 42 Ala. 648; and the sureties on the administration bond will be liable for such profits. Watson *v.* Whitten, 3 Rich. 224. An executor will be liable to creditors even for the profits of a business (specifically bequeathed) in the hands of the legatee. Matter of Quinn, 30 N. Y. S. R. 210. If he uses the fund himself, he will be responsible for the entire income received from it, though it exceeded ordinary interest. Marsh *v.* Renton, 99 Mass. 132. He must account either for interest or profits at the option of the parties interested. Robinett's Appeal, 36 Pa. St. 174; Matter of Holbert, 39 Cal. 597; Kyle *v.* Barnett, 17 Ala. 306; McElroy *v.* Thompson, 42 Ala. 656; Billingslea *v.* Glenn, 45 Ala. 540; Morgan *v.* Morgan, 4 Dem. 353.

He cannot deal in any way with the funds of the estate for his own profit. Ackerman *v.* Emott, 4 Barb. 626. He cannot contract with an heir at law to receive part of the estate in case the will is set aside. Miller's Appeal, 30 Pa. St. 478. So, a purchase for inadequate consideration by the administrator through an attorney from the heirs will be set aside, Handlin *v.* Davis, 81 Ky. 34; and the administrator must account to an infant heir for his share of the profits received from such contract. Martin *v.* Fielder, 82 Va. 455. And if the executor sells property of the estate for more than its appraised value, he must account for the increased value. Osborne *v.* Graham, 30 Ark. 66.

Purchase by the executor at his own sale. An executor cannot purchase property of the estate for his individual benefit, Smith *v.* Lansing, 22 N. Y. 520; or at his own sale, Field *v.* Colton, 7 Ill. Ap. 379; Blauvelt *v.* Ackerman, 5 C. E. Gr. 148; or in his own foreclosure proceeding; Everton *v.* Tappen, 5 Johns. Ch. 497; or under an execution sale of the goods of a debtor of the estate, Haberman's Appeal, 101 Pa. St. 329; And he will be liable for its appraised value, although purchased for a less price. Blackwell *v.* Blackwell, 4 Stew. (N. J.) 796, affg. 2 Id. 576; Griswold *v.* Chandler, 5 N. H. 492. So, he must account for the full value of testator's real property bought in at a sufficient sale and resold by him. Bechtold *v.* Read, 4 Dick. (N. J.) 111. If he converts property of the estate to his own use, he will be liable for its appraised value. Miller *v.* Towles, 4 J. J. Marsh. 255.

Any sale by a trustee to himself is voidable, irrespective of the good faith of the purchaser, Piatt *v.* Longworth, 27 O. St. 159; Bellamy *v.* Bellamy, 6 Fla. 62; Mason *v.* Martin, 4 Md. 124; if proceedings to avoid it are taken within a reasonable time. Williams *v.* Rhodes, 81 Ill. 571. The *cestui que trust* may elect to take the consideration or to avoid the sale and retain the property. Litchfield *v.* Cudworth, 15 Pick. 23; Staats *v.* Bergen, 2 C. E. Gr. 554; Chapman *v.* Comings, 43 Vt. 16; Green *v.* Sargent. 23 Vt. 466; Mead *v.* Byington, 10 Vt. 116. If the sale has been treated by the *cestui que trust* as valid, and the executor has accounted for the appraised value (in excess of the valuation paid), he will not be accountable for subsequent profits or dividends. Stewart's Appeal, 110 Pa. St. 410. A purchase by the executor through the intervention of a third party stands on the same footing and will be set aside, or the executor will be liable for the real value. Ames *v.* Downing, 1 Bradf. 321. So, if the purchase is made in-

directly and for the benefit of the executor's wife. Davone *v.* Fanning, 2 Johns. Ch. 252. Where the sale is set aside, an administrator is entitled to have his purchase money refunded. Yeackel *v.* Litchfield, 13 Allen 417.

An executor will hold for the benefit of the estate property which he has purchased under a foreclosure sale, Van Vleck *v.* Lounsbury, 34 Hun 569; Matter of Gilbert, 39 Hun 61; Schoonmaker *v.* Van Wyck, 31 Barb. 457; or under a testamentary power of sale to himself. Clark *v.* Blackington, 110 Mass. 369. A purchaser from him with notice takes no title, Rogers *v.* Fort, 19 Ga. 94; Booyer *v.* Hodges, 45 Miss. 78; and property may be followed into the hands of a collusive purchaser. Petrie *v.* Clark, 11 Serg. & R. 377.

Purchase of assets—Claims. Where an executor or administrator charges himself in his account with assets at their cash value, the specific assets become his individual property. Smith *v.* Gregory, 75 Mo. 121; Harwood *v.* Harper, 54 Ala. 659. So too, notes or securities taken by him for the estate, Blakely *v.* Carter, 70 Wis. 540; or property of the estate converted by him and accounted for. Sowles *v.* First National Bank, 54 Fed. Rep. 564. And such property cannot be followed into the hands of one to whom he has transferred it, although he afterward becomes insolvent and unable to pay the balance charged against him in the account. Bellows *v.* Sowles, 53 Fed. Rep. 325. An executor cannot make profit out of the purchase of claims against the estate, Paff *v.* Kinney, 1 Bradf. 1; and will be allowed only for what he has actually paid for the claim, Wolf *v.* Banks, 41 Ark. 104; Calvert *v.* Holland, 9 B. Mon. 458; Miller *v.* Towles, 4 J. J. Marsh. 255; Carruthers *v.* Corbin, 38 Ga. 75; although he purchased the claim before, and in anticipation of, taking out letters. Chevallier *v.* Wilson, 1 Tex. 161. If he buys an adverse claim, the distributees may ratify the purchase and take the benefit of it. Wiswall *v.* Stewart, 32 Ala. 433. On the other hand, if he buys a claim without regard to just set-offs, he can only have allowance for the sum actually due from the estate. Sorrels *v.* Trantham, 48 Ark. 386.

Real estate — Proceeds, rents, and charges. In general, the account of an executor or administrator should contain only the transactions relating to the personal property, and not receipts and payments on account of the realty. Cornwell *v.* Deck, 2 Redf. 87; Lucy *v.* Lucy, 55 N. H. 9; Walker's Appeal, 116 Pa. St. 419.

Thus, the account of an administrator should not include rents collected, Estate of Conner, 16 Phila. 239; especially where the rents were collected as guardian of the infant heirs, Matter of Blow, 32 N. Y. S. R. 290; or otherwise as agent for the heirs. So, the accounting will not determine the liability of the administrator for rent for occupation of lands of the intestate. Estate of Graham, 8 Lanc. L. Rev. 367. But where the personal representative as such has control of the real property, either by statute or by the provisions of the will, he must account for the rents collected. Dix *v.* Morris, 66 Mo. 514. So, where he has collected and used the rents to protect a sale of the land (although his sureties may not be liable for such rents). Brown *v.* Fessenden, 81 Me. 522. So, where he has claimed credit in his account for dower paid by him out of rents collected. Ambleton *v.* Dyer, 53 Ark. 224.

Where real and personal property are blended as one entire trust estate in the hands of an executor, it is generally and properly treated as such in the accounts rendered by him.

In like manner an executor must account for timber sold off of the decedent's lands, Gordon *v.* West, 8 N. H. 444; or for the proceeds of land sold by him, Matter of Beecher, 19 N. Y. Supp. 971; although he had already accounted for the personal estate, Id.; and although the purchaser was a creditor of the estate and applied the debt as a payment of the purchase money. Matter of Selleck, 111 N. Y. 284. In like manner he must account for the proceeds of land taken by him as security for a debt due to the estate, Matter of Potter, 32 Hun 599; but not for lands of the intestate sold by him as mortgagee in his own right. Dexter *v.* Arnold, 3 Mason 284. If he has needlessly sold lands for the payment of the debts of the deceased, he may be charged with the proceeds without deduction of charges or commissions. Ambleton *v.* Dyer, 53 Ark. 224.

As to accounting for taxes paid on the real estate of the deceased, see Matter of Selleck, 111 N. Y. 284; Estate of Fells, 13 Phila. 289; Estate of Vodges, 16 Phila. 220. As to expenses connected with the real property, see Vol. II. p. 198, n.; and as to accounting for real assets, see American note, Vol. III. p. 166, *et seq.*

Vouchers—Onus probandi. In an executor's account the burden is on the executor to prove the items of discharge. Brewster *v.* Demarest, 3 Dick. (N. J.) 559; Kirby *v.* Coles, 3 Gr. (N. J.) 441; McDonald *v.* Carnes, 90 Ala. 147; Dawson *v.* Hemebrick, 33 W. Va. 675. So, of a trustee. Hutton *v.* Williams, 60 Ala. 133. And the burden is on the contestant to prove assets not accounted for and denied in the verified account. Matter of Palmer, 3 Dem. 129; Matter of Wendell, 3 How. Pr. (N. S.) 68. The presentment of vouchers shifts the burden, as to items of discharge, upon the objector. Matter of Fithian, 1 Connoly 187. And an accountant need not establish his vouchers until they are disputed. Boughton *v.* Flint, 74 N. Y. 476. The vouchers may be impeached on the accounting, Matter of Lloyd, 39 N. Y. S. R. 851; *e. g.*, by proof that the voucher was forged and that the amount had not been paid. Matter of Butler, 2 Connoly 572. Under the New York Code (Code C. P. § 2735) an account may be approved without vouchers when admitted by opposing counsel. Matter of Langlois, 2 Connoly 481. When a voucher has been lost, the payment should be proved by the testimony of the person to whom it was made. Matter of Rowland, 5 Dem. 216. But the rule requiring such evidence in case of lost vouchers may be waived. Rose *v.* Rose, 6 Dem. 26. Parol evidence of the payment of taxes is admissible after proof of loss of the receipts. Estate of Moore, 72 Cal. 335. An executor should, however, produce vouchers even for items under twenty dollars, if he has them, Orser *v.* Orser, 5 Dem. 21; and he will not be allowed for disbursements for legal services not properly proved by voucher or other evidence. Clock *v.* Chadeagne, 10 Hun 97; Johnson *v.* Henagan, 11 S. C. 93. So, of other credit items claimed without voucher. McGuigan *v.* Hall, 21 S. C. 600. It is no fraud for an administrator to obtain credit in his settlement for taxes actually paid by him without an order from the Probate Court and without a voucher. Sorrels *v.* Trantham, 48 Ark. 386. But an item without voucher or proper explanation should be disallowed. Matter of Selleck, 111 N. Y. 284.

On final settlement credit items may be proved by *ex parte* affidavits if not contested. McDonald *v.* Carnes, 90 Ala. 147. But a verified account is not *prima facie* evidence in favor of the administrator if objected to, Underhill *v.* Newburger, 4 Redf. 499; nor the production of an unproved bill and

receipt, McDonald *v.* Carnes, 90 Ala. 147; Estate of Williamson, 12 Phila. 144; Wright *v.* Wright, 64 Ala. 88; nor even entries on the books of the debtor. Johnson *v.* Henagan, 11 S. C. 93.

Settlement of account. Intermediate accounts are open to correction on final settlement, Liddell *v.* McVickar, 6 Halst. 44; Ritchey *v.* Withers, 72 Mo. 556; Matter of Davis, 62 Mo. 450; Ditmar *v.* Bogle, 53 Ala. 169; or on appeal from final settlement, Williams *v.* Petticrew, 62 Mo. 460; or on a reopening of the final account. Sheetz *v.* Kirtley, 62 Mo. 417. Thus, an executor may have allowance on his second account for a credit item omitted in the first account, Estate of Vodges, 16 Phila. 220; or may show that a balance of current account charged against him has proved to be uncollectible, State *v.* Wilson, 51 Ind. 96. But on the final account items in the intermediate account are presumed to be correct. Tayloe *v.* Bush, 75 Ala. 432; Myers *v.* Myers, 98 Mo. 262; Ditmar *v.* Bogle, *ubi supra;* Cunningham *v.* Cauthen, 37 S. C. 123. And the intermediate account is conclusive on the final settlement as to items disputed and passed upon by it, Stayner's Case, 33 O. St. 481; Reynolds *v.* Jackson, 9 Stew. (N. J.) 515; or as to items of property on which commissions were allowed to the accountant and which are afterward claimed by him not to be assets of the estate, Cooley *v.* Van Syckle, 1 McCart. 496; or items returned by him as assets of the estate and afterward claimed as his individual property. Garvey *v.* McCue, 3 Redf. 318. And, in general, a statement of fact in the final account must accord with that of the intermediate account. Stone *v.* Morgan, 65 Miss. 247.

Settlement of account—How far conclusive. A final account settled in the proper court cannot be questioned in a collateral proceeding. Ordinary *v.* Kershaw, 1 McCart. 527; Yeoman *v.* Younger, 88 Mo. 424; Wolff *v.* Schaeffer, 74 Mo. 154; Vanbibber *v.* Julian, 81 Mo. 618; Townsend *v.* Townsend, 60 Mo. 246; Peacocke *v.* Leffler, 74 Ind. 327; Hall *v.* Anthony, 13 R. I. 221.

So, in general, of all accounts, intermediate or final. Voorhees *v.* Voorhees, 3 C. E. Gr. 223; Dunn *v.* Campbell, 2 Dick. (N. J.) 4; Holden *v.* Lathrop, 65 Mich. 652; Harlow *v.* Harlow, 65 Me. 448; Cooper *v.* Burton, 7 Baxt. 406; Williams *v.* Robinson, 63 Tex. 576. But see, *contra*, as to intermediate accounts, West *v.* West, 75 Mo. 204; North *v.* Priest, 81 Mo. 561. The executor is concluded by his account from setting up in an action brought by a legatee that the balance shown by the account had proved to be uncollectible, Thompson *v.* McGaw, 2 Watts 161; or (as against creditors) from showing that property belonging to himself had been charged by mistake as assets. McDonald *v.* McDonald, 50 Ala. 26. And the order settling the account is conclusive against his sureties. Dix *v.* Morris 66 Mo. 514. But it has been held that he could be credited in suit by a distributee against him with payments for the estate allowed in an earlier account and omitted by mistake in his final account. Kyle *v.* Kyle, 25 W. Va. 376. So, where his account erroneously states the payment of a legacy or claim, the misstatement may be corrected in an action brought by the legatee, Harvell *v.* Seal, 121 Ind. 193; or creditor. Budd *v.* Hiler, 3 Dutch. 43.

The accounting is not, however, conclusive as to items not contained in it, Hollady *v.* Hollady, 24 S. C. 521; McAfee *v.* Phillip, 25 O. St. 374; Estate of Stott, Myrick's Prob.

168; or not properly contained in it. Patterson *v.* Booth, 103 Mo. 402. Thus, a settlement making no account of a legacy charged on land which the executor had sold, nor of the proceeds of the land, is no bar to an action for the legacy and for an accounting. Van Rensselaer *v.* Van Rensselaer, 113 N. Y. 207.

A settlement made by executors has been held to be either binding on all the parties to it or on none of them, Gibbons *v.* Jones, 56 Ga. 297; but it may be binding on the immediate parties in interest, although the remaindermen have not been cited. Elsworth *v.* Hinton, 47 Hun 625. In general, a party to it cannot question it in a collateral proceeding, Dickson *v.* Hitt, 98 Ill. 300; even as to the purchase of land of the testator by the executor himself, for the price of which he stands charged in his account, Creamer *v.* Holbrook (Ala.), 11 So. Rep. 830. But *ex parte* accounts are not conclusive against distributees, Edwards *v.* Edwards, 1 Dem. 132; Roberts *v.* Johns, 16 S. C. 171; Grant *v.* Hughes, 94 N. C. 231; or sureties, Livingston *v.* Combs, Coxe (N. J.) 42; although *prima facie* correct. Radford *v.* Fowlkes, 85 Va. 820. The account binds all parties not under disability, Washington *v.* Black, 83 Cal. 290; including infants duly represented by guardian, Matter of Singer, 6 Civ. Pro. 389; Waring *v.* Lewis, 53 Ala. 615; but does not bind persons under disability, Riley *v.* Norman, 39 Ark. 158; such as an infant not represented by guardian, Collins *v.* Collins, 140 Mass. 502; Conwill *v.* Conwill, 61 Miss. 202; Harrison *v.* Lightsey, 32 S. C. 293; Piatt *v.* Longworth, 27 O. St. 159; who disaffirms the account at his majority, Estate of Tilden, 6 Civ. Pro. 15; or within a year after (by Mississippi statute). Mayo *v.* Clancy, 57 Miss. 674.

Private settlement. Where all parties are *sui juris*, a settlement by agreement among themselves is binding upon all and will not be disturbed, Estate of Barber, 142 Pa. St. 476; Matter of Engs, 32 N. Y. S. R. 1063; Piatt *v.* Longworth, 27 O. St. 159; especially after having been acted upon for several years, Estate of Morris, 16 Phila. 343; and they cannot afterward bring suit for property alleged to have been omitted from the account, Grady *v.* Porter, 53 Cal. 680; nor have leave to appeal for errors which might have been readily discovered at the time of the accounting. Ahearn *v.* Mann, 63 N. H. 330.

Discharge of personal representative. The allowance of the final account is not of itself a discharge of the accountant. McCrea *v.* Haraszthy, 51 Cal. 146. On the other hand, a formal order of discharge will not release him from liability for assets received and not accounted for. West *v.* Waddill, 33 Ark. 575. But such an order made before the completion of the administration is a nullity, and will not bar a suit by creditors, Blanchard *v.* Williamson, 70 Ill. 647; nor terminate the authority of the executor as to unadministered assets. Weyer *v.* Watt, 48 O. St. 545. So, a discharge will be treated as a nullity, and not available as evidence on a subsequent citation for settlement, where the record shows that the court was without jurisdiction. Head *v.* Bridges, 67 Ga. 227. A discharge, however, is binding upon distributees who do not move to set it aside within the time allowed by law, although one under disability subsequently had it set aside as to himself. Fitzsimmons *v.* Johnson, 90 Tenn. 416. And an *ex parte* discharge amounts to a disavowal of the trust so as to set the Statute of Limitations running in favor of the accountant. Frick *v.* Lewis, 26 S. C. 237. An administrator should

plead his discharge obtained after the commencement of an action against him. Jones *v.* Hammett, 5 S. C. 41. And a discharge pending a suit by bill filed originally against his decedent and revived against the administrator is no defense to a decree afterward rendered in such suit. Diversey *v.* Johnson, 93 Ill. 547. So, a discharge of administrator *ex parte* in the state of his appointment is no defense to a decree recovered against him in another state in a suit in which the administrator had appeared without setting up the discharge. Lawrence *v.* Nelson, 143 U. S. 215.

A distributee may maintain an action to set aside an *ex parte* discharge of the administrator and to compel him to account, Roberts *v.* Johns, 10 S. C. 101; but a discharge is, in general, conclusive on parties to the proceedings, Ward *v.* Parker, 19 S. C. 608; and cannot be questioned in a collateral proceeding, Simpson *v.* Cook, 24 Minn. 180; even though the court made a mistake of law in the allowance of a certain claim. Cameron *v.* Morris, 83 Tex. 14. The discharge is a complete bar to an action on the administrator's bond, Fuller *v.* Connelly, 142 Mass. 227; or even (after several years' delay) to an action by the succeeding administrator for assets fraudulently misappropriated. Sanders *v.* Loy, 61 Ind. 298.

Resettlement of account. A final account may be opened for fraud or mistake, Stevenson *v.* Phillips, 2 McCart. 286; Byerly *v.* Dowlins, 72 Mo. 217; and not otherwise, Wright's Accounting, 16 Abb. Pr. N. S. 429; Sheets *v.* Kirtley, 62 Mo. 417; Miller *v.* Major, 67 Mo. 247; and without notice to the administrator's sureties, although their liability may be increased on the further accounting. Deobald *v.* Opperman, 111 N. Y. 531. This may be done to give the accountant opportunity to collect debts not already collected, Robinson *v.* Ring, 72 Me. 140; or for his neglect in not collecting notes which were charged off in the account, Miller *v.* Steele, 64 Md. 79; but see, *contra*, where the applicant knew of the neglect, Daniels *v.* Smith, 58 Ia. 577; or for erroneous or excessive allowance of commissions, Estate of Stratton, 46 Md. 551; Reynolds *v.* Jackson, 12 Stew. (N. J.) 313; or for a subsequent recovery by judgment had against him for property with which he was charged, Estate of McGorray, 48 N. Y. S. R. 141; or for the willful omission or concealment of assets by the accountant, Houts *v.* Shepherd, 79 Mo. 141; Smiley *v.* Smiley, 80 Mo. 44; or the filing of false vouchers, Hanf *v.* Whittington, 42 Ark. 491; or fraudulently inducing a creditor to file his claim. Chase *v.* Busom, 92 Ind. 61.

But an account will not be opened after a balance has been actually paid over and the accountant discharged, Lehr's Appeal, 98 Pa. St. 25; nor for a mistake of the accountant in collecting a debt without due allowance of the credits to the debtor, Dickie *v.* Turner, 85 Ind. 100; nor for a mistake in allowing the administrator for his personal services, Williams *v.* Herrick (R. I.), 25 Atl. Rep. 1099; nor for the accountant's mistake of law. Matter of Watts, 2 Connoly 415; Matter of Singer, Id. 389; Matter of Carr, 46 N. Y. S. R. 585.

In some states this is matter of discretion, Moore *v.* Raggi, 5 Stew. (N.J.). 278; in others, matter of right. Meckell's Appeal, 112 Pa. St. 554. In some the only relief is by the statutory appeal, Grady *v.* Hughes, 64 Mich. 540; confined to the matters appearing in the record, Duvernois *v.* Le Blanc, 75 Mich. 431; and raised by the exceptions to the account. Matter of Kellogg, 104 N. Y. 648; Matter of Sprague, 125 N. Y. 732; Blackwell *v.* Blackwell, 4 Stew. (N. J.) 796; Luse *v.* Rarick, 7 Id. 212.

An executor or administrator is entitled to be allowed all reasonable expenses which have been incurred in the conduct of his office (*p*), except those which arise from his own default (*q*).† But it is a general principle, that an executor or administrator shall have no allowance, at law or in equity, for personal trouble and loss of time in the execution of his duties (*r*).† Nor is the case altered by the executor's renunciation of the executorship, and his afterward assisting in it; nor although it should appear that he has deserved more, and has benefited the estate to the prejudice of his own affairs (*s*). And even where an executor in trust, who had *no legacy, in a case in which the execution of the office was likely to be attended with trouble, at first declined, but afterward agreed with the residuary legatee, in consideration of a hundred guineas, to act in the executorship, and on his dying before the execution of the trust was completed, his executors filed a bill to be allowed that sum out of the trust money in their hands: the court refused the claim, observing, that independently of the executor's having died before the trust was executed, such bargains ought to be discouraged, as tending to dissipate the property (*t*). So a surviving partner, being executor, is not entitled, without expressed stipulation, to any allowance for carrying on the trade after the testator's death (*u*). Again, in New *v.* Jones

Allowances to executor: for his expenses: for his trouble:

(*p*) Potts *v.* Leighton, 15 Ves. 277. Hyde *v.* Haywood, 2 Atk. 126. Stat. 22 & 23 Vict. c. 35, s. 31, *ante*, p. *1735. In these should be included the expenses of keeping up the testator's domestic establishment for a reasonable time after his death: Field *v.* Peckett, 29 Beav. 576.

(*q*) Pannel *v.* Fenn, Cro. Eliz. 348. He shall not be allowed the costs of an action against him as executor, which he ought never to have defended: Chambers *v.* Smith, 2 Coll. 742. Smith *v.* Chambers, 2 Phil. Ch. C. 221.

† See note 4 on p. *1772 *ubi infra.*

(*r*) Robinson *v.* Pett, 3 P. Wms. 251. Scattergood *v.* Harrison, Mosely, 130. Brocksopp *v.* Barnes, 5 Madd. 90.

(*s*) Robinson *v.* Pett, 3 P. Wms. 249.

(*t*) Gould *v.* Fleetwood, 3 P. Wms. 251, note (A). So in Ayliffe *v.* Murray, Atk. 58, two persons, executors and trustees under a will, would not prove the will, nor suffer the *cestui que trust* to take out letters of administration *cum testamento annexo*, till he had executed a deed, by which he was to pay a hundred pounds to one executor, and two hundred pounds to the other, within six months after they should have exhibited an inventory: Lord Hardwicke declared the deed was unduly obtained, and decreed that no allowance should be made for the sum of 100*l.* and 200*l.* to the plaintiffs.

(*u*) Burden *v.* Burden, 1 Ves. & B. 170. Stocken *v.* Dawson, 6 Beav. 371. Nor is an executor and legatee of such surviving partner: *ibid.*

(*x*), it was held by Lord Lyndhurst, C. B., that if a solicitor or attorney, who is an executor, does professional business himself for the benefit of the estate, he is not entitled to be paid his bill of costs for such services: it would be placing his interest at variance with the duties he has to discharge (*y*). Accordingly in Moore *v.* Frowd (*z*), Lord Cottenham held, that a trustee, who is a solicitor, is entitled to be repaid such costs, charges, and expenses only as he has properly *paid out of his pocket; and that it makes no difference in this respect, that the instrument creating the trust may have directed that the trust moneys should be applied (*inter alia*) in payment of all expenses, disbursements, and charges to be incurred, sustained, or borne by the trustee, in professional business, journeys or otherwise, and that the trustee might retain all reasonable costs, charges, and expenses which he might sustain or be put unto, such costs, charges, and expenses to be reckoned, stated, and paid as between attorney and client. Again, in Collins *v.* Carey (*a*), where business relating to a trust estate had been transacted by two solicitors in partnership, one of whom was a trustee of the estate, Lord Langdale, M.R., held, that, in passing the accounts of the trustee, costs out of pocket alone could be allowed (*b*). And the general rule, that a trustee acting as solicitor in the trust matters is merely entitled to costs out of pocket, has been firmly established by several subsequent decisions (*c*). And the rule is not restricted

Trustee acting as solicitor merely entitled to costs out of pocket:

(*x*) Exchequer, Aug. 9, 1833. The writer is indebted to the kindness of Mr. Younge, for the note of this decision, which is inserted in 9 Bythewood's Convey. pp. 337, 338. It is also reported in a note to Cradock *v.* Piper, 1 Mac. & G. 668.

(*y*) See also Willson *v.* Carmichael, 2 Dow & Clark, 51. 1 Mac. & G. 678, 679. Nicholson *v.* Tutin, 3 Kay & J. 159.

(*z*) 3 Mylne & Cr. 45.

(*a*) 2 Beav. 128.

(*b*) And the rule is the same, though the business be done by one of the partners who is not trustee: Christophers *v.* White, 10 Beav. 523.

(*c*) Fraser *v.* Palmer, 4 Y. & Coll. 515, *coram* Alderson, B. 1 Mac. & G. 679. Re Sherwood, 3 Beav. 338. Bainbrigge *v.* Blair, 8 Beav. 588. Todd *v.* Wilson, 9 Beav. 486. The costs in such cases, of a defendant, are ordered to be taxed as between solicitor and client, without any special directions: York *v.* Brown, 1 Coll. 260: And under such an order, or under an order to tax costs generally, the Taxing Masters may take notice that the solicitor is also a trustee, and apply the rule: Cradock *v.* Piper, 1 Mac. & G. 664. But the rule does not preclude an executor who acts as solicitor in a cause in which he is a party in his representative character, from being allowed, as against the estate, that proportion of the whole costs which his town agent in the cause was entitled to receive: Burge *v.* Brutton, 2 Hare,

[*1761]

to cases of express *trust, but applies to the case of an executor or trustee, though there be no express trust (*d*). But the rule does not apply to the costs incurred *in a suit* where the solicitor acts in the suit for himself and his co-trustees: In such a case he shall be allowed the full costs which would be properly chargeable by a stranger to the trust, taking care that they are not to be increased by his being one of the parties (*e*). This excep*tion, however, in favor of

but not as to costs incurred in a suit where solicitor acts for himself and co-trustees.

373. See Re Taylor, 18 Beav. 165. And it must be observed, that the rule does not disentitle a solicitor, who is a trustee, from claiming his professional charges under a special contract, nor under a will authorizing him expressly to make such charges: Re Sherwood, 3 Beav. 341. Christophers *v.* White, 10 Beav. 524, by Lord Langdale. See also Broughton *v.* Broughton, 5 De G. M. & G. 166, by Lord Cranworth. Harbin *v.* Darby, 28 Beav. 325, *post*, p. *1769. Where, however, a testator by his will authorized any trustee thereof who might be a solicitor, to make the usual professional *or other proper and reasonable charges* for all business done and time expended in relation to the trusts of the will, whether such business was usually within the business of a solicitor or not, it was held that the Taxing Master had power to allow a trustee, who was a solicitor, the proper charges for business not strictly of a professional nature transacted by him in relation to the trust estate: Re Ames, 25 C. D. 72. But where the direction of the will was that one of the executors and trustees should continue to act as solicitor in relation to the property and affairs of the testatrix, and should make his *usual* professional charges, and that notwithstanding his acceptance of the office of trustee and executor, he should be entitled to make the same professional charges and to receive the same pecuniary emoluments and remuneration for all business done by him, and all attendances, time, and trouble given and bestowed by him in or about the execution of the trusts and powers of the will, as if he not being himself a trustee or executor were employed by the trustee or executor, it was held that all items which were not of a strictly professional character ought to be disallowed: Re Chapple, 27 C. D. 584. Where a solicitor-trustee is an attesting witness of a will, a declaration that he shall be allowed profit costs for transacting the business of the trust estate will not entitle him to such costs, the right to take such costs being a beneficial interest within s. 15 of the Wills Act: Re Barber, 31 C. D. 665, approved by the Court of Appeal in Re Pooley, 40 C. D. 1. Compensation may, in special cases, be made, under the authority of the court, to a trustee acting as solicitor in the trust matters; though not by allowing him to make the usual professional charges; Bainbrigge *v.* Blair, 8 Beav. 588.

(*d*) Pollard *v.* Doyle, 1 Drew. & Sm. 319.

(*e*) Cradock *v.* Piper, 17 Sim. 41. 1 Mac. & G. 664. See also the observations of Lord Cranworth on this case in Broughton *v.* Broughton, 5 De G. M. & G. 164, 165, and see Re Barber, 34 C. D. 77, in which case, Chitty, J., after stating the rule as to solicitors not being entitled to profit costs says: "Consequently, if an executor, being a solic-

[*1762] [*1763]

the solicitor, does not extend to a case where a solicitor, who is a trustee, acts in a suit for him*self alone, or by his partner for him-

itor, acts solely for himself or acts for himself and his co-trustee in the business of a trust, he, in the absence of any provision to the contrary in the instrument creating the trust, is not entitled to receive out of the trust estate profit costs. That is the rule where the business is done not in a suit but out of Court; the same rule applies where the solicitor does business in Court, acting for himself as solicitor, where he is plaintiff in an action, and also where he is the defendant. He is allowed, however, to act as solicitor for *cestuis que trustent* in an action, because that is not part of the business of the trust properly so called, and in cases where the *cestuis que trustent* obtain as they sometimes do, in fact generally do, out of the trust estate, their costs, the solicitor who acted for them is not deprived of his proper bill of costs by reason of his also being a trustee." This question of the right of a solicitor-trustee to charge profit costs was much considered by the Court of Appeal in the case of Re Corsellis, 34 C. D. 675. In that case it was held (1) that the firm of the solicitor-trustee was entitled to profit costs made in acting for the trustees who were respondents to an application for maintenance by a next friend on behalf of an infant under the summary procedure of the court, such costs coming within the rule of Cradock *v.* Piper; (2) that profit costs made by the firm of the solicitor-trustee when acting for a receiver appointed in an administration action, the solicitor-trustee being the defendant in the action, could not be retained by the firm, on the principle that the trustee's interest and duty conflicted; (3) that profit costs made by preparing leases and agreements for leases of parts of the trust estate could not be retained, because, although actually paid by the lessees, the solicitors were employed on behalf of the trust estate; and (4) that steward's fees of a manor which formed part of the trust estate, and of which trustees had appointed a partner in the firm steward, might be retained, even though such fees were brought into the partnership account. The Court of Appeal, in this case, while disapproving of the decision in Cradock *v.* Piper, expressly refused to depart from a rule so long followed, or to fritter away the decision by saying that it only applied to a hostile action. Cotton, L.J., in his judgment (p. 681), thus sums up the general principle: "It is a well-established rule, and one founded on sound principles, that a trustee who is a solicitor, cannot as a rule, make any profits as a solicitor on business which is done by himself or by the firm of which he is a member in matters relating to the estate. There is one very obvious principle which applies, namely, that the trustee must discharge his duty without making any profit out of it. If there is business which a layman cannot properly perform, he may employ a solicitor to do that legal business. If it is business which a trustee in his position cannot be expected to discharge, such as receiving rents from a number of small properties, he may employ an agent to collect those rents, but if he chooses to do work, he cannot make a charge against the estate; that is the rule as regards work done out of Court by a trustee, whether acting for himself or for the other trustee as well. From the rule I have stated one exception was established by Cradock *v.*

[*1764]

self alone (*f*), nor to a case of a solicitor, being a trustee and acting as solicitor for himself and his co-trustees in the administration of the trust *out of court* (*g*). And where an executor and trustee under a will employs his co-trustee, who is a solicitor, to transact the legal business of the trust, the solicitor is only entitled to costs out of pocket (*h*).

When executor entitled to commission.

Again, an agent, who is appointed executor of his principal, is not entitled to charge commission on business done subsequently to the testator's death (*i*).† So an executor, who is one of a banking firm, cannot charge the ordinary banker's commission against his testator's estate (*k*). So an executor, who acts as auctioneer in the sale of assets, is not entitled to charge commission (*l*). But where a testator, a victualer, directed his trade to be carried on by his executors, brewers *and spirit merchants, who had been in the habit of serving him in his lifetime, and supplies were furnished for that purpose by them, the court would not declare that the executors were entitled to receive the cost price only for these supplies, but directed an inquiry whether the supplies were proper, and furnished at the ordinary market price (*m*). So in Willis *v.* Kimble (*n*), a testator devised and bequeathed his freehold and leasehold estate to trustees for sale, and he declared, that his trustees respectively should be entitled to have and receive out of the trust moneys, all costs, charges, and expenses, fees to counsel and for advice, and for professional assistance, and loss of time, paid, incurred,

Piper: that is to say, where there is work done in a suit not on behalf of the trustee, who is a solicitor, alone, but on behalf of himself and a co-trustee, the rule will not prevent the solicitor or his firm from receiving the usual costs if the costs of appearing for and acting for the two have not increased the expense; that is to say, if the trustee himself has not added to the expense which would have been incurred if he or his firm had appeared only for his co-trustee. For that there is an obvious reason—that it is not the business of a trustee although he is a solicitor, to act as solicitor for his co-trustee. But the exception in Cradock *v.* Piper is limited expressly to the costs incurred in respect of business done in an action or a suit."

(*f*) Lyon *v.* Baker, 5 De G. & Sm. 622.

(*g*) Lincoln *v.* Windsor, 9 Hare, 158.

(*h*) Broughton *v.* Broughton, 5 De G. M. & G. 160. 2 Sm. & G. 422.

(*i*) Sheriff *v.* Axe, 4 Russ. Chanc. Cas. 33.

† See note 4 on p. *1772 *ubi infra.*

(*k*) Heighington *v.* Grant. 5 M. & Cr. 258, 262.

(*l*) Kirkman *v.* Booth, 11 Beav. 273. Nor if he is a partner with others, can the partnership make a charge: Matthison *v.* Clarke, 3 Drewr. 3.

(*m*) Smith *v.* Langford, 2 Beav. 362.

(*n*) 1 Beav. 559.

[*1765]

sustained, or occasioned in or about the execution of the said trusts, or in anywise relating thereto: One of the trustees was a land surveyor, and he superintended the management and sale of the estates: And Lord Langdale, M.R., held, that he was entitled, upon the terms of the will, to a compensation for loss of time. Again, it is competent for the court to appoint an executor and trustee consignee with the usual profits (*o*). And when the court, in its discretion, has made such an appointment, and the appointment has been acted upon, the court will not afterward withdraw its sanction from it (*p*).

Commission on remittances from India to this country by testator.

It has been holden that agents, being also appointed executors, are not entitled to commission upon remittances from India to this country by the testator, not received until after his death (*q*). The Courts of India, in order to induce proper persons to accept the office of executor, at one time adopted a rule, opposed to the principles above stated, *by permitting an executor to charge a commission upon the amount of assets collected by him in India. And if assets, collected in India, came to be administered, not in India, but by the courts in England, the courts here were of necessity bound to follow that rule of policy which was adopted in India. But now by the Indian Act, No. II., of 1874, re-enacting Act No. XXIV. of 1867, it is provided by sect. 56 that no person other than the Administrator-General, acting officially, shall receive or retain any commission or agency charges for anything done as executor or administrator under any probate or letters of administration, or letters *ad colligenda bona* granted by the Supreme Court or High Court of Judicature at Fort William in Bengal, since the passing of Act No. VII. of 1849, or by either of the Supreme or High Courts of Judicature at Madras and Bombay, since the passing of Act No. II. of 1850, or by any court of competent jurisdiction within the meaning of sections 187 and 190 of the Indian Succession Act, 1865, but this enactment shall not prevent any executor or other person from having the benefit of any legacy bequeathed to him in his character of executor or by way of commission or otherwise.

(*o*) Marshall *v.* Holloway, 2 Swanst. 432.

(*p*) Morison *v.* Morison, 4 My. & Cr. 215.

(*q*) Hovey *v.* Blakeman, 4 Ves. 596. However, in Scattergood *v.* Harrison, Mosely, 130, Lord King held, that where a factor was made executor, if anything appeared to have been consigned to him by the testator in his lifetime, though it came to his hands after his death, since the executor acted as factor, he should be allowed commission for it.

[*1766]

Sections 52–55 prescribe the commission to which the Administrator-General is entitled (*r*).

The same exception to the general rule was established with respect to the West Indies. The principle upon which the Court of Chancery has gone, in this respect, appears to be this: that the commission is in the nature of a remuneration to a trustee, who, besides the usual trouble belonging to the execution of his trust, has also to undergo all the inconveniences arising from being in a foreign country, and conducting the business of a merchant there: And although, as it has above appeared, no commission is allowed to a trustee in this country for what he does, however laborious his duty may be, yet inasmuch as it is of great importance *to get persons to assume the character of trustees in the East and West Indies, therefore, so long as they are actually in the country there discharging the duty of trustees, the court allows the commission (*s*). But no commission is payable where the remittant himself is actually, at the time of the remittance, in this country (*t*): And it should seem, that, in order to entitle himself to the commission, the party must himself be actually in the colony where the remittance was made: For if, by any means, money, which has not been received by him upon the spot and remitted by him from the spot to this country, is remitted to this country, it appears to be the settled rule of the Court of Chancery, that the commission shall not be allowed (*u*). And accordingly, in Campbell *v.* Campbell (*x*), it was held that if an executor in India collected part of the assets there, and then came to England, and had the remainder remitted to him by his agent, he was entitled to commission on that part only which he had collected in India.

(*r*) See a pamphlet by Mr. Broughton, late Administrator-General of Bengal, on "The Custody and Preservation of the Property in India of Deceased Persons."

(*s*) 1 Moo. P. C. 40.

(*t*) 4 Ves. 72. *Ibid.* 596.

(*u*) Chambers *v.* Goldwin, 5 Ves. 834. Denton *v.* Davy, 1 Moo. P. C. 15, 32. In this last case it was holden by the Lords of the Privy Council, that the commission of 6*l.* per cent. given by the Jamaica Act, 24 Geo. II. c. 19, to agents, trustees, guardians, executors, &c., for the management and disposal of the rents and profits of an estate, being in the nature of a remuneration for the trouble and responsibility of conducting the business of a merchant on the island, is payable only to persons actually resident on the island, and capable and willing to act in the trusts of the estate; and the commission of 5*l.* per cent. given by the same act for receiving and remitting moneys can only be claimed where the receipts or payments are actually made on the island.

(*x*) 13 Sim. 168.

[*1767]

Allowances for payments to collectors, &c.

Generally speaking, an executor who has proved the will, or a person taking out letters of administration, cannot retire from his duty, but must collect the estate himself (*y*). However, an executor is justified in having recourse to an agent to collect the assets, in cases where a provident owner might well employ a collector: and the executor will, there*fore, be allowed the expense so incurred, in his accounts (*z*). Accordingly, where a testator gave annuities to his executors for their trouble in the execution of his will, and died possessed of several houses, let at weekly rents, it was held, that the executors were justified in paying a person to collect the rents, and did not, therefore, lose their annuities (*a*). So if there are assets in India, the executor shall be allowed the expense of an agent to collect them: And, therefore, the court will appoint a receiver in India of a testator's assets, on the application of an executor resident in England (*b*).

So, on one occasion (*c*), it was holden that, from the nature of the accounts, the executor was justified in employing an accountant, and that the expense ought to be allowed to the executor.

Again, if an executor pays an attorney for his trouble and attendance, in the transacting and conduct of the testator's affairs, he ought to be allowed and repaid what he so *pays (*d*). But an executor is not

(*y*) Weiss *v.* Dill, 3 M. & K. 26.

(*z*) See Bonithon *v.* Hockmore, 1 Vern. 316. Davis *v.* Dendy, 3 Mad. 170. See also Hopkinson *v.* Roe, 1 Beav. 180, in which case Lord Langdale, M.R., held, that the executors under the circumstances were justified in appointing an agent to get in the testator's debts, and in allowing him a salary for his trouble: But the costs of transferring funds, from the name of a testator into the names of the executors, were disallowed: And his lordship held, that the sum to be allowed executors for the expenses of transferring a large sum of money into court is one guinea; and extra brokerage was, therefore, disallowed. But where an executor, upon transferring stock to a legatee, paid one-sixteenth per cent. to a stockbroker for identifying him (the executor) at the bank, it was held, that he ought to be allowed this payment: Jones *v.* Powell, 6 Beav. 418.

(*a*) Wilkinson *v.* Wilkinson, 2 Sim. & Stu. 237. S. P. as to an administrator, Trezevant *v.* Frazer, Hil. Term. 1832, before Sir L. Shadwell, V.-C. So, even at law, it should seem, that an executor, under a plea of *plene administravit*, will be allowed the reasonable charges of collecting the testator's debts: Giles *v.* Dyson, 1 Stark. N. P. C. 32.

(*b*) Cockburn *v.* Raphael, 2 Sim. & Stu. 453: But the receiver must give sureties resident in England: *Ibid.*

(*c*) Henderson *v.* M'Iver, 3 Madd. 275.

(*d*) Macnamara *v.* Jones, Dick. 587. In Stackpoole *v.* Stackpoole, 4 Dow. P. C. 226, an administrator was not allowed to set off a charge for poundage alleged to have been paid to his agent in the administration.

entitled to be allowed, without question, the amount of the bill of costs which he has paid, *bona fide*, to the solicitor to the trust; and the officer of the court, without regularly taxing the bill, will moderate their amount (*e*). And it may here be observed, that an executor will not be allowed the charges of his solicitor for doing things which the executor ought strictly to do himself (*f*). And therefore, where a solicitor is appointed executor, and is to be at liberty to charge for his professional services, he is only entitled to charge for services strictly professional, and not for matters which an executor ought to do without the intervention of a solicitor, such as for attendances, to pay premiums on policies, attending at the bank to make transfers, attendances on proctors, auctioneers, legatees and creditors (*g*).

Allowance of interest to executor for money advanced by him.

With respect to the allowance of interest to executors upon sums advanced by them for the purposes of their trust, it has been held, that if an executor borrows money, or advances it out of his own pocket, to pay the debts of his testator which carry interest, or satisfy some of his testator's creditors who are very importunate and threaten to bring actions, he is entitled not only to be paid in full in priority to the creditors (*h*), but also to an allowance of interest for the money so advanced or borrowed (*i*).† It may be observed, that it is contrary to the course of practice to allow interest to an executor on costs paid by him, pending a suit regarding the estate (*k*). Where interest is allowed on sums carrying interest, it should be calculated from the time of a balance *being struck on the general report; for, until that time, it cannot be ascertained that the executor had not the money in his hands (*l*).

Executor receiving money, to which he is not entitled, must refund, although he has paid it away to creditors.

In Pooley *v.* Ray (*m*), a mortgage came to an executor who received the mortgage-money, and paid it away to his testator's creditors: Afterward it appeared, that the mortgage had been satisfied in the testator's lifetime: And Lord Cowper held, that the executor must refund, although he had before paid the money away in debts, which he

(*e*) Johnson *v.* Telford, 3 Russ. Chanc. Cas. 477.

(*f*) Harbin *v.* Darby, 28 Beav. 325.

(*g*) Harbin *v.* Darby, 28 Beav. 325.

(*h*) Spackman *v.* Holland, 2 Giff. 198.

(*i*) Small *v.* Wing, 5 Bro. P. C. 72, Toml. edit.

† See note 4 on p. *1772 *ubi infra.*

(*k*) Gordon *v.* Trail, 8 Price, 416. Lewis *v.* Lewis, 13 Beav. 82.

(*l*) 8 Price, 416.

(*m*) 1 P. Wms. 355.

had not otherwise assets to pay, and that he must have his remedy against such creditors as by mistake he had paid: His lordship observed, that "though this might be a hard case, yet if the plaintiffs had a right to be paid their money, which they had overpaid on the mortgage, this right could not be overthrown by the defendant, the executor, applying the money in any manner he should think fit; any more, than if an executor at law should recover a debt, and pay the testator's debts with it, and afterward this judgment recovered by the executor is reversed in error; the executor must restore the money to the plaintiff in error; and his having paid it away, in debts of his testator, will not excuse him from paying it back. So in the same manner, if there were a decree for the executor to be paid a sum of money by the defendant, and the executor, having received the money, pays it away in debts, and then the defendant, against whom the executor had recovered the decree, brings an appeal, and reverses the decree; the plaintiff in the appeal shall be restored to the money."

This doctrine of Lord Cowper was approved of by Lord Alvanley, in Pickering *v.* Stamford (*n*), but his lordship remarked, that it would be otherwise, if the defendant had delayed the appeal, and willingly stood by, while the executor paid away the money; for that would be drawing the executor into a snare.

What an executor may be charged with under a reference of just allowances.

*It may be proper in this place to mention the case of Brown *v.* Spooner (*o*). There the executor gave an annuity of 50*l.* to be purchased by his executor, and, till purchased directed him to pay the annuitant 40*l.* a year: The executor, instead of purchasing, paid 50*l.* a year from the testator's rents: And Lord Thurlow held, that although the executor was bound to purchase the annuity immediately after the expiration of the first year from the testator's death, and therefore the court might charge him for the overpayment from the estate, yet the master, on a general reference of just allowances, could not do so. So in Garland *v.* Littlewood (*p*), a case was alleged, on the pleading, to charge executors for what they might, but for their willful default, &c., have received: At the hearing the common accounts only were directed against them; The case coming on for further directions on the master's report, Lord Langdale, M.R., held that the executors would not be charged as for their willful default, &c., and that no inquiry could then be directed on the subject, although the master's report laid a foundation for such an inquiry.

(*n*) 2 Ves. 583. (*o*) 1 Ves. 291. (*p*) 1 Beav. 527.

[*1771]

Just allowances are now made in any account directed by any order or judgment without any direction for the purpose (*q*). Accounts, on the basis of willful default, are still not made on a common administration judgment or order (*r*), but the principle laid down in Garland *v.* Littlewood seems to have been departed from. The old practice was that a decree on the footing of willful default could not be got except at the hearing; now it seems, that if willful default is charged in the pleadings and evidence of it is adduced, accounts and inquiries on that footing may be directed at any stage of the proceedings, although the judgment at the trial gives no relief on that footing, provided, however, the claim to such relief has not been dismissed (*s*).

When an executor may be charged on the footing of willful default.

*By Order XXXIII., r. 2 of R. S. C. 1883, it is enacted that:—"The Court or a Judge may at any stage of the proceedings in a cause or matter, direct any necessary inquiries or accounts to be made or taken, notwithstanding that it may appear that there is some special or further relief sought for or some special issue to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner."

This section does not enable a judge to make an order against an executor or administrator on the footing of willful default either at the hearing or at any subsequent time, unless willful default has been pleaded; but where willful default has been alleged and a case is made for it on the pleadings, an account on the footing of willful default can be directed either at the hearing or trial of the action or at any subsequent stage (*t*).

If willful default has not been charged in the pleadings and in the course of the inquiries directed a case of willful default is disclosed, it would seem that by the leave of the court fresh proceedings may be taken charging willful default in the same way in which, under the old practice, a supplemental bill could be filed (*u*).

(*q*) R. S. C., 1883, Ord. XXXIII., r. 8.

(*r*) Laming *v.* Gee, 10 C. D. 715.

(*s*) Re Symons, 21 C. D. 757.

(*t*) Barber *v.* Mackrell, 12 C. D. 534, 538, *per* Fry, J. See also Job *v.* Job, 6 C. D. 562, as explained in Mayer *v.* Murray, 8 C. D. 424. Re Symons, 21 C. D. 757.

(*u*) Laming *v.* Gee, 10 C. D. 715. And see Dowse *v.* Gorton [1891], A. C. 190, 204, *per* Lord Macnaghten.

---

4. *Allowance of commissions—What law governs.* The compensation of executors and administrators is governed by the law in force at the time the services were rendered, Key *v.* Jones, 52 Ala. 238; Gould *v.* Hayes, 19 Ala. 438; Estate of Tutt, 41 Mo. Ap. 662; but see People *v.* Mutual Benefit Associa-

tion, 39 Hun 52; and is subject to any change or repeal of law after his appointment. Hawley *v.* Singer, 3 Dem. 589. A change in the law between accountings will affect only subsequent accounts. Gaines *v.* Reutch, 64 Md. 517. But a statutory reduction of the rate of commissions made after an administrator's sale and before payment of the purchase money will not affect his commissions. Fulton *v.* Davidson, 3 Heisk. 614. In such case, where services rendered under the earlier statute were inadequately compensated under that act, this fact may be considered by the court in its allowance for subsequent services under a statute giving discretionary power to the court. Id. So, without change of statute, where the allowance on the former account was excessive. Reynolds *v.* Jackson, 9 Stew. (N. J.) 515.

Rate fixed by statute. In most of the United States the rate of commission is fixed by statute at a certain shifting or maximum percentage on the amount received and disbursed, varying from one to ten per cent. in the different states. This is so, in Alabama, Arkansas, California, Colorado, Georgia, Illinois, Iowa, Kentucky, Louisiana, Maine, Maryland, Michigan, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New York, North Carolina, Ohio, Oregon, South Carolina, Texas, and Wisconsin. Woerner on Admn. § 524. This commission is in some cases, and the maximum commission in all cases, left in the discretion of the Probate Court. In a few states there is a small additional *per diem* allowance for actual service, and in Minnesota and Vermont no statutory provision except such *per diem*. In Florida, Indiana, Kansas, Rhode Island, Tennessee, Virginia, and West Virginia, the entire allowance is left discretionary with the court. Woerner on Admn. § 524. And the same discretion is usually exercised in the few states (Connecticut, Massachusetts, New Hampshire, and Pennsylvania) where there is no statutory provision.

Compensation fixed by will. The testator may himself fix the compensation to be received by his executors, and such provision will be favorably construed, Marshall *v.* Wysong, 3 Dem. 173; and not strictly conditioned on their actual handling of the funds (as in case of the statutory commission). Hill *v.* Nelson, 1 Dem. 357. But a provision that "each executor other than my wife do take and receive the full rate of commissions provided by law," excludes the wife (to whom the bulk of the estate was given for life), Matter of Kernochan, 104 N. Y. 618; although the contrary was held in Marshall *v.* Wysong, 3 Dem. 173; S. C. 67 How. Pr. 519.

In general, the testamentary direction will control the allowance. But it has been held that neither the testator nor the court can deprive the executor of the minimum allowance fixed by the statute, in Maryland. Hardy *v.* Collins, 60 Md. 229. And in Pennsylvania, the expression of a desire that the executor should not charge more than a certain sum will not prevent a reasonable allowance by the court in excess of that sum. Estate of Good, 150 Pa. St. 301. So, in Alabama, where a legacy of $1000 (which was held to be wholly inadequate) was given to each of the executors as compensation for their services. Raines *v.* Raines, 51 Ala. 237. But in New York, where the testator provided that his sons should receive no compensation as executors, commissions will not be allowed to one on the ground that his labors had been unexpectedly onerous on account of the death of the other. Matter of Girard, 1 Dem. 244. The New York statute requires an executor to elect between

the statutory compensation and that which is provided by the will. Code Civ. Pro. §§ 2737, 2811; Greer *v.* Greer, 5 Redf. 214; Matter of Weeks, 5 Dem. 194; and see Matter of Tilden, 5 Dem. 230. And it is too late to make such election nine years after full knowledge of the circumstances of the estate and twelve years after testator's death. Arthur *v.* Nelson, 1 Dem. 337. And in such election the executor takes the risk of the provision of the will proving invalid. Marshall *v.* Downing, 1 Abb. App. Dec. 525. The will may, however, provide for a special compensation in addition to the statutory commissions. Clinch *v.* Eckford, 8 Paige 411. A legacy to the executor "or his heirs" does not put him to an election between it and his statutory commissions, Campbell *v.* Mackie, 1 Dem. 185; nor will a bequest of the whole income of the estate to the executor for life, Betts *v.* Betts, 4 Abb. N. C. 317; but it is otherwise of a legacy given expressly in lieu of commissions. Renshaw *v.* Williams, 75 Md. 498.

Compensation fixed by agreement. Where a person agrees before his appointment to administer the estate without commissions, he will be bound by such agreement. Matter of Hopkins, 32 Hun 618; Estate of Davis, 65 Cal. 309; Bate *v.* Bate, 11 Bush 639; and see too, Matter of Cooper, 95 N. Y. 507. So, by an agreement to settle the estate for a certain sum. Estate of Koch, 148 Pa. St. 159. So, a testamentary trustee may bind himself by agreement as to commissions to be charged with the *cestui que trust.* Bowker *v.* Pierce, 130 Mass. 262. And the court will not afterward disturb the agreement and refuse commissions for neglect in inventorying the trust fund. Jackson *v.* Jackson, 2 Green Ch. 113. But an agreement between the next of kin for distribution of the personal estate will not defeat the executor's right to commissions. Succession of Hopkins, 33 La. An. 1166. And an agreement by one of two executors will not bind the survivor, Estate of Porter, 14 Phila. 290; or the living co-executor. Albro *v.* Robinson, 93 Ky. 195. And one executor may enforce against his co-executor an agreement for one-half the commissions in consideration of his renunciation of the office. Ohlendorf *v.* Kanne, 66 Md. 495.

Compensation fixed by court. Where there is no provision in the will, the court will allow a reasonable compensation. Muscogee Lumber Co. *v.* Hyer, 18 Fla. 698. But the exercise of judicial discretion must be based on legal testimony. Wisner *v.* Mabley, 70 Mich. 271. The discretion of the Probate Court has been held to be open to review by appeal, Wisner *v.* Mabley, 74 Mich. 143; Hawkins *v.* Cunningham 67 Mo. 415; where there is manifest error, Anderson *v.* Berry, 2 McCart. 232; or flagrant abuse of discretion, or fraud on the court. Reynolds *v.* Canal & Banking Co. 30 Ark. 520; Wood *v.* Lee, 5 Mon. 50; Ramsey *v.* Ramsey, 4 Mon. 151. And the Probate Court may correct an error in previous allowances on a subsequent accounting. Griggs *v.* Shaw, 15 Stew. (N. J.) 631; but see, *contra,* Matter of Tilden, 44 Hun 441. And it is held in some states that the discretion of the court in the matter of allowance of commissions is not subject to appeal. Handy *v.* Collins, 60 Md. 229; Mower's Appeal, 48 Mich. 441. The appeal may be taken by the residuary legatee or distributee, Andress *v.* Andress, 1 Dick. (N. J.) 528; but not by a stranger to the estate, Schrichte *v.* Stites, 127 Ind. 472; but the final account will not be opened simply to readjust the commissions, Stevenson *v.* Phillips, 1 Zab. 70; except for fraud or mistake, Stevenson *v.* Phillips, 2 McCart. 236; in which case the accountant may be ordered to

refund. Vaughn *v.* Hudson, 59 Miss. 421. But the allowance will only be increased in a plain case. Askew *v.* Hudgens, 99 Ill. 468. Where the executor has resigned after rendering little or no service, the court may reduce the allowance to a small sum, Matter of Allen, 96 N. Y. 327; or may refuse it altogether. Matter of Hayden, 1 Connoly 454.

Basis of calculation. Commissions are allowed only on moneys or property actually received by the accountant, and not on the personal estate left by the testator. Conover *v.* Conover, 3 Gr, (N. J.) 420; Hitchcock *v.* Mosher, 106 Mo. 578. So, on his actual payments, Matter of Lloyd, 39 N. Y. S. R. 851; or funds practically passing through his hands. Tompkins *v.* Tompkins, 18 S. C. 1. Commissions are allowed on moneys recovered for the widow and next of kin for damages resulting in the death of the decedent (to be apportioned with the fund), Baker *v.* Railroad, 91 N. C. 308; and on the statutory allowance of property to the widow on her dissent from the will, Mayberry's Appeal, 33 Pa. St. 258; but see, *contra*, Peyton *v.* Smith, 2 Dev. & B. 325; and commissions are not allowed on the homestead. Estate of Peck, Myrick's Prob. 59. Commissions are allowed on legacies, although payable in trust, Matter of Mount, 2 Redf. 405; and even on an estate of which the bulk goes to the executor beneficially, Estate of Haines, 4 Halst. Ch. 506; although they have been disallowed on a share bequeathed to him for life, with remainder to his issue and an absolute power of appointment on his death without issue. Lippincott *v.* Stokes, 2 Halst. Ch. 122. In New York, the commission is apportioned, half being allowed on the funds received and half on the funds paid out, Lyendecker *v.* Eisemann, 3 Dem. 72; Betts *v.* Betts, 4 Abb. N. C. 317; Hawley *v.* Singer, 3 Dem. 589; Ward *v.* Ward, 4 Redf. 34; reckoning the value of the funds received at the time of their receipt and of the funds paid out at the time of paying them out, Rowland *v.* Morgan, 3 Dem. 289; or at the time of accounting. Matter of Blakeney, 1 Connoly 128. The moneys received are to be reckoned after deductions made before payment to the executor, Shepard *v.* Shepard, 19 Fla. 300; or after deduction of broker's commissions on sales. Hitchcock *v.* Mosher, 106 Mo. 578. And if Confederate currency has been received, commissions will only be allowed on its actual value. May *v.* Green, 75 Ala. 162; Trammel *v.* Philleo, 33 Tex. 395. Where the will gives a special allowance on "collections," the term is confined to its ordinary mercantile sense. Ireland *v.* Corse, 67 N. Y. 343. Where government bonds are called in and paid off, the executor should receive a commission on them as for a debt collected. Matter of Tilden, 44 Hun 441; revg. 5 Dem. 230. Receipts are not always confined to the representative's term of office, but will be allowed afterward as in the case of a trustee *durante minore ætate* after the ward's majority and until settlement of his accounts. Hawley *v.* Singer, 3 Dem. 589. But only the receipts since the last accounting are to be reckoned as basis for further commissions. Tucker *v.* Tucker, 6 Stew. (N. J.) 235, affd. 7 Id. 292. And such moneys do not support the higher rate payable on "the first" moneys. Id. And commissions are not allowed on investments or reinvestments, Betts *v.* Betts, 4 Abb. N. C. 317; Estate of Beck, 12 Phila. 74; nor on insurance premiums paid by the executor and repaid to him by the company on surrender of the policy. Metcalfe *v.* Colles, 16 Stew. (N. J.) 148.

Where mortgaged land is sold, the commissions are to be reckoned on the equity of redemption only. Estate of

Marvin, Myrick's Prob. 163; Baucus *v.* Stover, 24 Hun 109, overruling Cox *v.* Schermerhorn, 18 Hun 16. Commissions, in Maryland, are reckoned only on the appraised value of choses in action, Hardt *v.* Birely, 72 Md. 134; and not allowed on those which are inventoried and not appraised. Estate of Stratton, 46 Md. 551. On the other hand, moneys which have been collected will entitle the administrator to a commission, although not inventoried. Succession of Linton, 31 La. An. 130. No commissions will be allowed on worthless notes and accounts, although they have been inventoried, Moffatt *v.* Loughridge, 51 Miss. 211; nor, in Louisiana, for rents collected. Succession of Turnell, 34 La. An. 888. So, commissions will not be allowed on property which never came to the hands of the accountant, Steel *v.* Holladay, 20 Or. 462; such as proceeds of decedent's property sold by the sheriff, Succession of Gollain, 31 La. An. 173; or property recovered by creditors or next of kin in a suit brought by them adversely to the administrator to enforce rights against third persons which he had neglected, Moore *v.* Randolph, 70 Ala. 575; or moneys collected and retained by a distributee, Estate of Sharp, 11 Phila. 92; or even, in North Carolina, personal assets not converted by the administrator, but distributed in specie. Scroggs *v.* Stevenson, 100 N. C. 354. But the rule, in New York and elsewhere, allows commissions on such distribution of property. Cairns *v.* Chambert, 9 Paige 160; Morgan *v.* Hannas, 13 Abb. Pr. N. S. 363; Matter of Allen, 29 Hun 11.

Commissions on specific legacies—Advancements. Commissions are not allowed on specific legacies, Gordon *v.* West, 8 N. H. 444; Hall *v.* Tryon, 1 Dem. 296; although the article bequeathed has been sold, and the price collected and paid over by the executor with the approval and by the direction of the legatee, Farquharson *v.* Nugent, 6 Dem. 296; and this has been applied to an insurance policy specifically bequeathed, and collected by the executor and paid over to the legatee. Platt *v.* Moore, 1 Dem. 191.

So, commissions are not allowed on advancements, Metcalfe *v.* Colles, 16 Stew. (N. J.) 148; and are to be reckoned on the balance due to a legatee after deducting advancements. Hill *v.* Nelson, 1 Dem. 357.

Commissions on foreign assets. No commissions are allowed on assets in a foreign jurisdiction which have never come to the hands of the accountant, Jones *v.* Jones, 39 S. C. 247; or are to be accounted for by him in the foreign jurisdiction, Matter of Colles, 4 Dem. 387; or have been transferred directly by a foreign administrator to a legatee in the home jurisdiction. Pomeroy *v.* Mills, 10 Stew. (N. J.) 578.

On executor's debt—Commissions. In some states commissions are not allowed on the executor's own debt to the testator, Estate of Hoffer, 156 Pa. St. 473; although bequeathed to the executor, Handy *v.* Collins, 60 Md. 229; Estate, of Miller, 2 Pa. Dist. R. 410; nor on a debt of the testator to the executor which is more than extinguished by the testator's claim against the executor, Bedell's Appeal, 85 Pa. St. 398; nor on the executor's own distributive share. Garrett *v.* Garrett, 2 Strobh. Eq. 272. But commissions are allowed on debts of the decedent to the executor. Matter of Mount, 2 Redf. 405; Hosack *v.* Rogers, 9 Paige 461. And his commissions will be applied to the satisfaction of his debt to the testator, Ward *v.* Ward, 4 Redf. 34; although the executor is insolvent. Freeman *v.* Freeman, 4 Redf. 211.

No commissions are allowed on the executor's own commissions, Trammel *v.* Philleo, 33 Tex. 395; nor to a sur-

viving executor on money paid to the representative of the deceased executor for commissions. Betts *v.* Betts, 4 Abb. N. C. 317.

Commissions on value of land. In general, the personal representative is not entitled to commissions on the real property of the deceased, Estate of Beck, 12 Phila. 74; especially where he has taken possession of land not belonging to his decedent, Matter of Ricaud, 70 Cal. 69. Executors are not allowed commissions on land partitioned among the heirs, Matter of Tilden, 44 Hun 441; S. C. 5 Dem. 230; Bruce *v.* Bruce, 42 N. Y. S. R. 146; S. C. 16 N. Y. Supp. 900; although the executors had a power of sale which was not exercised. Metcalfe *v.* Colles, 16 Stew. (N. J.) 148; Phœnix *v.* Livingston, 101 N. Y. 451. See, however, as to compensation in such case, Twaddell's Appeal, *81 Pa. St. 221. But they are entitled to commissions on the proceeds of sales of real property made under a testamentary power of sale, Armstrong *v.* O'Brien, 83 Tex. 635; Baker *v.* Johnston, 12 Stew (N. J.) 493; Levering *v.* Riggs, 49 Md. 432; Matter of Rickenbaugh, 42 Mo. Ap. 328; or sold for administration by order of the Probate Court. Crenshaw *v.* Bentley, 31 Mo. Ap. 75; Scroggs *v.* Stevenson, 100 N. C. 354. So, where lands were devised to the executors to convert into money, pay legacies, &c., with authority to retain five per cent. commission on both real and personal property, they are entitled to commissions on the value of the land on election by the residuary legatee to take the land and their conveyance of it to him. Stein *v.* Huesmann, 11 Stew. (N. J.) 405. Commissions are not allowed for collections of rents of decedent's lands unnecessarily. Scudder *v.* Ames, 89 Mo. 496; Stearly's Appeal, 38 Pa. St. 525. But, in Louisiana, he may have commissions even on the rental of a plantation leased to himself. Succession of Sparrow, 40 La. An. 486. And where the care of the land is committed to the executor as trustee, he is entitled to commissions on the rents collected. Hawley *v.* James, 16 Wend. 61.

Commissions to co-executors. Where there are several executors or administrators, and all perform their duty, the statutory commission will, in general, be equally divided among them, Squier *v.* Squier, 3 Stew. (N. J.) 627; Pomeroy *v.* Mills, 13 Stew. (N. J.) 517; although one may not qualify until after the other has taken possession of the securities of the estate. Betts *v.* Betts, 4 Abb. N. C. 317. In the absence of discretion under the statute the court must divide the commissions equally. Matter of Seitz, 6 Mo. Ap. 250; Schoenrich *v.* Reed, 8 Mo. Ap. 356. In some states, however, the commissions are apportioned among the several executors or administrators according to their respective services. Speirs *v.* Wisner, 88 Mich. 614; Matter of Harris, 4 Dem. 463; Andress *v.* Andress, 1 Dick. (N. J.) 528; Estate of Walker, 9 Serg. & R. 223; Hodge *v.* Hawkins, 1 Dev. & B. Eq. 564; Perry *v.* Maxwell, 2 Dev. Eq. 488; Grant *v.* Pride, 1 Dev. Eq. 269. But an executor may by his own agreement with his co-executor be estopped from claiming more than an equal share. John *v.* John, 122 Pa. St. 107. In New York, a power of apportionment was given to the surrogate by the act of 1849, White *v.* Bullock, 20 Barb. 99; but he cannot give commissions to an executor who has done nothing. Matter of Manice, 31 Hun 119.

Commissions at the full rate are given to each of several executors under the New York statute if the estate exceeds $100,000 over and above debts, &c. Redf. Surr. Pr. on Wills 774; Code

C. P. § 2736. This requirement is satisfied by rents exceeding $100,000 and personal property less than $100,000. Matter of Leggatt, 4 Redf. 148. The inventory is not conclusive as to the value, Matter of Blakeney, 23 Abb. N. C. 32; but the principal at the decedent's death must exceed the designated amount irrespective of the subsequently accruing income, Estate of Slosson, 4 Civ. Pro. 280; and if the income is the only fund distributable by the executor, it must exceed that amount without reckoning the principal of the trust fund. Matter of Willets, 112 N. Y. 289. As to apportionment for unequal services under this statute, see Matter of Kenworthy, 17 N. Y. Supp. 665; Welling *v.* Welling, 8 Dem. 511; Hill *v.* Nelson, 1 Dem. 357.

In general, a sole acting administrator or executor takes the whole commission, White *v.* Bullock, 20 Barb. 91; Succession of Bodenheimer, 35 La. An. 1035; Matter of Depew, 6 Dem. 54; but he is entitled to only one-half of the full commission, in Louisiana, where his co-executor is a legatee (and as such not entitled to any commission). Succession of Edwards, 34 La. An. 216. So, where only one co-executor accounts, he will be entitled to all the commissions on that accounting. Waddill *v.* Martin, 3 Ired. Eq. 562. And as between several executors filing separate accounts, their respective commissions are *prima facie* apportionable according to their several accounts, John *v.* John, 122 Pa. St. 107; although in reckoning the rate of commissions (on a descending scale) the aggregate of the several accounts is considered. Betts *v.* Betts, 4 Abb. N. C. 317; Valentine *v.* Valentine, 2 Barb. Ch. 430; but see Matter of Meserole, 36 Hun 298.

Where an executor has become liable for the devastavit of his co-executor on their joint bond, he may be subrogated for his indemnity to the co-executor's share of the commissions allowable. Albro *v.* Robinson, 93 Ky. 195. But where the Probate Court has allowed the commissions in gross on a joint account, it cannot afterward apportion them between the co-executors. Mount *v.* Slack, 18 Stew. (N. J.) 129; S. C. 12 Id. 230; Estate of Markle, 11 Pa. Co. Ct. 13. But an executor may sue his co-executor in equity for an accounting for commissions withheld, Speirs *v.* Wisner, 88 Mich. 614; and may in such suit recover interest on such commissions from the time when the account was passed, Pomeroy *v.* Mills, 13 Stew. (N. J.) 517. In some states he may sue his co-executor at law for such commissions. Kennedy *v.* Gruell, 84 Ind. 133.

Commissions to successive representatives. In general, an administrator is not entitled to the compensation for the services of his predecessor, even though his predecessor had received no funds of the estate, Succession of Linton, 31 La. An. 130; nor should he receive commissions on property on which his predecessor has received commissions, Estate of Marvin, Myrick's Prob. 163; or which he has not fully administered. Conover *v.* Ellis, 4 Dick. (N. J.) 549. It has been held that the maximum statutory allowance should be apportioned between the successive representatives, Scroggs *v.* Stevenson, 100 N. C. 854; or on transmission to a successor. May *v.* Skinner, 149 Mass. 375. One executor qualifying receives the whole commission, and another qualifying after his death receives commissions only as administrator *de bonis non.* Matter of Depew, 6 Dem. 54. On the other hand, commissions may be allowed for the services of the deceased co-executor separately upon the settlement of his account by his

representatives. Eppinger *v.* Richards, 35 Miss. 540.

Commissions to special administrator —Trustee. Commissions are allowed to a special administrator or an administrator *pendente lite* on the moneys that come to his hands and are administered by him. Matter of Duncan, 3 Redf. 153; Green *v.* Saunders, 18 Hun 308; Hawkins *v.* Cunningham, 67 Mo. 415; Matter of Handfield, 16 Mo. Ap. 332; Matter of Moore, 88 Cal. 1; but see, Matter of Boothe, 38 Mo. Ap. 456. So, receivers appointed by the court on the removal of the executors and testamentary trustees. Holcombe *v.* Holcombe, 2 Beas. 415.

Testamentary trustees are now in like manner usually compensated for their services, Longley *v.* Hall, 11 Pick. 120; Clark *v.* Platt, 30 Conn. 282; Beatty *v.* Clark, 20 Cal. 11; according to the value of the services, Gould *v.* Hayes, 25 Ala. 432; and at the same rate as executors, Slosson *v.* Naylor, 2 Dem. 257; Foote *v.* Bruggerhof, 50 N. Y. S. R. 311; Prevost *v.* Gratz (Pa.), 3 Wash. C. C. 434; or on the corpus of the estate, Ward *v.* Ward, 4 Redf. 34; except where it is left incompletely administered and turned over to his successor, Jones' Case, 4 Sandf. Ch. 616; but not for reinvestment of the principal paid in and invested by his predecessor. Clute *v.* Gould, 28 Hun 348. In Kentucky, however, the statute provides for commissions on funds reinvested. Clark *v.* Anderson, 13 Bush 111.

Commissions in double capacity. Double commissions may be allowed to one person acting in a double capacity as executor and trustee, Cram *v.* Cram, 2 Redf. 244; where a continuing trust is expressly provided for by the will, Estate of Slosson, 4 Civ. Pro. 280; Matter of Mason, 98 N. Y. 527; Matter of Blauvelt, 52 Hun 510; Matter of Crawford, 113 N. Y. 560; Matter of Carman, 3 Redf. 46; Pitney *v.* Everson, 15 Stew. (N. J.) 361, revg. 13 Id. 539; Baker *v.* Johnston, 12 Id. 493; or where the estate is subdivided into a number of trusts, Frame *v.* Willets, 4 Dem. 368; Hawley *v.* Singer, 3 Dem. 589; and the will contemplates separate duties as executor and trustee, Laytin *v.* Davidson, 95 N. Y. 263; Matter of Willets, 112 N. Y. 289; Slosson *v.* Naylor, 2 Dem. 257; Blake *v.* Blake, 30 Hun 469; *e. g.*, the leasing and management of the real estate. Phœnix *v.* Livingston, 101 N. Y. 451. So, in a trust for investment. Matter of Jackson, 32 Hun 200; but see Matter of Starr, 2 Dem. 141. The mere use of the word "trustee" is not of itself sufficient to raise a distinct trust in the executor. Bacon *v.* Bacon, 4 Dem. 5; McKie *v.* Clark, 3 Dem. 380; nor the execution of a testamentary power of sale of the land. Sanderson *v.* Pearson, 45 Md. 483. Commissions as trustee may be allowed under the New York act after treble commissions to the executors on an estate over $100,000, Ward *v.* Ward, 4 Redf. 34; apportioning the treble trustee commission among four trustees, after allowance to one of them as sole acting executor. Matter of Pike, 2 Redf. 255.

In Pennsylvania, the rule seems to be not to allow a double commission as executor and trustee, but to consider the additional labor in increasing the amount of the gross commission allowed, Wood's Appeal, 86 Pa. St. 346; Estate of Old, 150 Pa. St. 529; Estate of Rogers, 17 Phila. 500; Estate of Barclay, 11 Phila. 123; especially where the will did not appoint them to be trustees, Estate of Hepburn, 11 Phila. 80; although they may by agreement with the distributees assume a trust and be compensated accordingly. Culbertson's Appeal, 84 Pa. St. 303. But they will be entitled to a commission

on later income received as trustees. Estate of Soley, 15 Phila. 513. And if the same fund passes through his hand as executor under one will and trustee under another will, he will, of course, receive double commissions. Estate of Clermontel, 13 Phila. 235.

But double commissions are not allowed when the two offices are inseparably blended and there is no time designated for separating the trust fund from the estate in administration, Bruere *v.* Gulick, 14 Stew. (N. J.) 280; Johnson *v.* Lawrence, 95 N. Y. 154; Hall *v.* Hall, 78 N. Y. 535; Matter of Leinkauf, 4 Dem. 1; Valentine *v.* Valentine, 2 Barb. Ch. 430; Ward *v.* Ward, 4 Redf. 34; Holley *v.* S. G., 4 Edw. Ch. 284; Mann *v.* Lawrence, 3 Bradf. 424; unless the legatee has himself waived the objection by his course of action, *e. g.*, by the form of receipts given. Hurlburt *v.* Durant, 88 N. Y. 121. So, he cannot receive for the same services two commissions as executor and as guardian, Blake *v.* Pegram, 101 Mass. 592; especially where he has kept no separate accounts and has assumed the duty of guardian as a volunteer. Hagler *v.* McCombs, 66 N. C. 345.

Actual division of the estate is not, however, necessary to establish a distinction of the offices of executor and trustee. Clute *v.* Gould, 28 Hun 348. On the other hand, a mere mental appropriation is not sufficient. Miller *v.* Congdon, 14 Gray 114; McKnight *v.* Walsh, 9 C. E. Gr. 498.

Compensation for what services. An administrator is not entitled to compensation for services rendered before his appointment, Matter of Allen, 89 Ill. 474; or before he has qualified by giving the required bond, Matter of Baker, 35 Hun 272; or under letters which are void. Estate of Frey, 52 Cal. 658.

The statutory compensation covers, in general, all personal services of the administrator, McWhorter *v.* Benson, Hopk. Ch. 28; Renick *v.* Renick, 92 Ky. 335; such as the preparation of his accounts, Underhill *v.* Newburger, 4 Redf. 499; Matter of Weeks, 5 Dem. 194; O'Neill *v.* O'Donnell, 9 Ala. 734; and see Vol. II. p. 196, n., *ubi supra;* or the expense of indemnifying the estate by insurance of his individual property. Estate of Good, 150 Pa. St. 301. He cannot receive additional compensation as an agent or clerk, Matter of Butler, 1 Connoly 58; (as to allowance for clerk hire, see Hawley *v.* James, 16 Wend. 61; Matter of Butler, 1 Connoly 58; Steel *v.* Holladay, 20 Or. 462; and see also, Vol. II. p. 196, n., *ubi supra);* nor as an attorney for the estate, Shirley *v.* Shattuck, 6 Cush. 26; Estate of Munn, Tuck. 186; Collier *v.* Munn, 41 N. Y. 143; Campbell *v.* Purdy, 3 Redf. 434; Hough *v.* Harvey, 71 Ill. 72; nor as one of a firm of attorneys, Taylor *v.* Wright, 93 Ind. 121; and see Vol. II. p. 195, n., *ubi supra;* (but as to allowance of such fees, see Morgan *v.* Nelson, 43 Ala. 586; Harris *v.* Martin, 9 Ala. 899; Fulton *v.* Davidson, 3 Heisk. 614; Wendell *v.* French, 19 N. H. 205; Estate of McCloskey, 11 Phila. 95); nor for personal services rendered to the infant heirs, Sorrels *v.* Trantham, 48 Ark. 386; nor in the way of commissions as executor for services in continuing the business of the deceased. Beard *v.* Beard, 22 N. Y. Supp. 1; Matter of Hayden, 1 Connoly 454; S. C. 54 Hun 197; Dwyer *v.* Kalteyer, 68 Tex. 555; Jones *v.* Jones, 39 S. C. 247; Succession of Turnell, 34 La. An. 888; and see Stern's Appeal, 95 Pa. St. 504. On the other hand, his receiving a share of the net profits (as he had received before the death of the decedent, as an employee) will not defeat his claim to commissions as executor. Estate of Bewley, 12 Phila. 56.

Some statutes, however, contemplate

special compensation for extraordinary services, *e. g.*, in securing partnership property and foreign assets and setting aside fraudulent transfers, Wisner *v.* Mabley, 70 Mich. 271; S. C. 74 Id. 143; or managing disputed lands, Wood *v.* Lee, 5 Mon. 50; or effecting a settlement with creditors by which they accepted real estate of the deceased for their claims, Smith *v.* Smith, 79 N. C. 455; or for settling up the partnership business with the surviving partner, Mower's Appeal, 48 Mich. 441; or even as surviving partner. Estate of Pickens, 16 Phila. 354; McCullough *v.* Barr (Pa.), 29 W. N. C. 123. But this is generally left for separate adjudication and allowance, if the executor is also surviving partner, Estate of McMenamin, 15 Phila. 510; and is referable to his duty as such rather than as executor. Matter of Harris, 4 Dem. 463. He cannot have a special allowance for having stock transferred, Lindsay *v.* Richardson, 98 Mich. 319; nor for procuring a sale of the choses in action, or settling a dispute between the widow and the guardian of a minor child, Wisner *v.* Mabley, 74 Mich. 143; nor for selling land (where he had employed an agent), Blake *v.* Pegram, 101 Mass. 592; nor merely for his personal attention to the business of the administration. Parker *v.* Grant, 91 N. C. 338.

He cannot receive any further compensation for special services without special petition, Estate of Moore, 96 Cal. 521; and itemized proof of services. May *v.* Green, 75 Ala. 162; Wisner *v.* Mabley, 70 Mich. 271; Steel *v.* Holladay, 20 Or. 462; Jones *v.* Jones, 39 S. C. 247.

Where the commissions are wholly left to the discretion of the court as a compensation for services, the executor is not entitled both to annual allowance and commission, Sanderson *v.* Sanderson, 20 Fla. 292; but may receive an allowance for unsuccessful efforts to collect, Shepard *v.* Shepard, 19 Fla. 300; or for procuring the dower to be set off. Bartlett *v.* Fitz, 59 N. H. 502.

When commissions are payable. Commissions will not be allowed in anticipation of future services. Pomeroy *v.* Mills, 8 Stew. (N. J.) 442; Estate of Walker, 8 Serg. & R. 223. And executors may hold the necessary funds until the commissions are ascertained. Wheelwright *v.* Wheelwright, 2 Redf. 501. Under the New York practice only half commissions are allowed before completion of administration, and half when the property is turned over or paid out. Matter of Leinkauf, 4 Dem. 1; Kellogg's Case, 7 Paige 767. So, the final commissions will generally be deferred where there is further distribution to be made in the distant future, Conover *v.* Ellis, 4 Dick. (N. J.) 549; Estate of Marvin, Myrick's Prob. 163; until the administration is entirely finished, Succession of Sparrow, 40 La. An. 484; partial commissions being allowed in the meantime. Estate of Stratton, 46 Md. 551. Even the allowance of an intermediate account, in which charges are made for services, is not conclusive as to the amount to be finally allowed for commissions. Collins *v.* Tilton, 58 Ind. 374.

The executor or administrator cannot withdraw funds for his compensation in advance of allowance by the court, Lacey *v.* Davis, 4 Redf. 402; Wheelwright *v.* Wheelwright, 2 Redf. 501; and interest will be charged if he anticipates his commissions, Matter of Butler, 1 Connoly 58; Matter of Peyser, 5 Dem. 244, 494; United States Trust Co. *v.* Bixby, 2 Dem. 494; Wheelwright *v.* Wheelwright, 2 Redf. 501; Freeman *v.* Freeman, 4 Redf. 211; Estate of Meyer, 67 How. Pr.

170; especially where they are afterward disallowed, McKnight *v.* Walsh, 9 C. E. Gr. 498; but not where their withdrawal is by consent of the next of kin, Betts *v.* Betts, 4 Abb. N. C. 317; although taken without the order of the court. Wyckoff *v.* Van Siclen, 3 Dem. 75. Even by consent the executor cannot retain more than the statutory allowance. Matter of Hayden, 1 Connoly 454. He may be allowed commissions, although he has credited himself with an excessive amount, Williams *v.* Cubage, 36 Ark. 307; but not where he has taken such sum without accounting for it, Bates *v.* Vary, 40 Ala. 421; but no commissions will be allowed on funds retained after settlement and converted or where he has kept uninvested funds of the estate. Frey *v.* Frey, 2 C. E. Gr. 71. A distinction has been made between trustees administering and retaining commission on the income of the fund and executors in favor of the former. Matter of Harris, 4 Dem. 463. An executor is liable for misapplication of funds of the estate by way of commissions. Whitney *v.* Phoenix, 4 Redf. 180.

Commissions are not due until ascertained by the Probate Court, Estate of Worthington, 51 N. Y. S. R. 555; S. C. 22 N. Y. Supp. 19; on the settlement of the account. Estate of Meyer, 67 How. Pr. 170; Crowder *v.* Shackleford, 35 Miss. 321; Matter of Rose, 80 Cal. 166. So, of an outgoing administrator, only after his final settlement, Estate of Barton, 55 Cal. 87; and where an administrator *cum testamento annexo* claims commissions in a double capacity, they may be reserved until the settlement of both accounts. Matter of Paton, 111 N. Y. 480.

Commissions should be allowed on the final balance of the account, Davidson *v.* Moore, 14 S. C. 251; as of the date of settlement and not of filing of the account, Haskins *v.* Teller, 3 Redf. 316; subject to be varied by the correction of the balance on appeal or otherwise. Stevenson *v.* Hart, 3 Halst. Ch. 471. And commissions are not allowed for matters after settlement of account, Estate of Brinton, 10 Pa. St. 411; such as a proceeding for compelling distribution. Estate of Brinton, 10 Pa. St. 411.

Commissions—Payable out of what fund. Commissions on the income are, in general, payable out of the income, Danby *v.* Cummins, 4 Stew. (N. J.) 208; Woodruff *v.* Lounsbury, 13 Stew. (N. J.) 545; Cammann *v.* Cammann, 2 Dem. 211; Clute *v.* Gould, 28 Hun 348; Gordon *v.* West, 8 N. H. 444; although in a proper case, indicated by the testamentary scheme or otherwise, the entire commissions may fall on the general estate. Matter of Mount, 2 Redf. 405; Matter of Thompson, 5 Dem. 117; and the executor does not waive the right to commissions on the income by paying it over in full to the beneficiary for life. Matter of Mount, 2 Redf. 405. A charge may also be made against the principal fund for the care and safe keeping of it. Gordon *v.* West, 8 N. H. 444. So, the expenses of trustees are payable out of the fund, Hay's Appeal, 152 Pa. St. 384; even where the disposition of the fund was invalid. Johnson *v.* Holifield, 82 Ala. 123. But a trustee's commissions on sales of real estate will be payable out of the residuary estate rather than to abate a legacy which was charged on the proceeds, and could not be satisfied out of them. Levering *v.* Riggs, 49 Md. 432. So, commissions of one executor will be paid out of funds in the hands of his co-executor, where he has not himself enough in hand to pay legacies and commissions. Brandon *v.* Hoggatt, 32 Miss. 335. An annuity is not subject to commissions, in general. Lathrop *v.* Smalley, 8 C. E. Gr. 92; but see, *contra*, where

the annuity is payable out of the income of the trust fund, which is not sufficient to bear both annuity and the commissions. Grinnell *v.* Baker, 17 R. I. 41. And specific legacies are not charged with commissions, but they are to be taken from the residuary estate. Fowler *v.* Colt, 7 C. E. Gr. 44; Estate of McMenamin, 15 Phila. 512.

Commissions—When forfeited. Commissions will be forfeited for unfaithful management of the trust, Milligan's Appeal, 97 Pa. St. 525; Swatzwalter's Accounts, 4 Watts, 77; Estate of Bradley, 11 Phila. 87; or fraudulent collusion between the administrator and the guardian of the minor child, McCahan's Appeal, 7 Pa. St. 59; or for conversion of the assets, State *v.* Berning, 74 Mo. 87; or misappropriation of the funds, Estate of Clauser, 84 Pa. St. 51; Cook *v.* Lowry, 95 N. Y. 103; or for willful violation of the injunction of the court, Pearson *v.* Darrington, 32 Ala. 227; or any questionable administration of the trust. Blauvelt *v.* Ackerman, 8 C. E. Gr. 495, affd. 10 Id. 570. So, for concealing personal assets and procuring sale of real estate for debts, Ambleton *v.* Dyer, 53 Ark. 227; or for unfaithfully mixing trust funds with his own, Robinett's Appeal, 36 Pa. St. 191; or for willful neglect, Powell *v.* Powell, 10 Ala. 914; Hall *v.* Wilson, 14 Ala. 295; Gould *v.* Hayes, 19 Ala. 438; but not merely for the negligent use of the trust funds, Estate of Sourin, 11 Phila. 14; and compensation may be allowed for beneficial services, though the administrator was unfaithful. Jennison *v.* Hapgood, 10 Pick. 77, 112.

Commissions will, in general, be forfeited only for gross negligence. Harris *v.* Parker, 41 Ala. 604; Estate of Conklin, 2 Connoly 176. They may likewise be reduced for mismanagement, Barney *v.* Saunders, 16 How. 542; or refused for disregard of the directions of the will requiring investment of the funds, Warbass *v.* Armstrong, 2 Stockt. 263; Lathrop *v.* Smalley, 8 C. E. Gr. 192; especially where he has also involved the estate in litigation, Brewster *v.* Demarest, 3 Dick. (N. J.) 559; but commissions will not be forfeited for keeping too much money on hand. Frost *v.* Denman, 14 Stew. (N. J.) 47; and may even be allowed where loss has occurred through bad investments, Wilson *v.* Staats, 6 Stew. (N. J.) 524; or where unauthorized investments have been made without loss, Sanderson *v.* Sanderson, 20 Fla. 292; and even where loss has been due to negligent non-investment and charged as such to the accountant. Matter of Mount, 2 Redf. 405. So, commissions may be disallowed altogether where the settlement of the trust has been delayed for fourteen years and bunglingly executed, Stebman's Appeal, 5 Pa. St. 414; and although the neglect of the representative has been due to his kindness to the family. Smith's Appeal, 47 Pa. St. 424. So, where he has kept no accounts and has managed the property negligently, Eppinger *v.* Campa, 20 Fla. 262; as well as speculated with the funds. Estate of Hermstead, 60 Pa. St. 423. So, where he has failed to account until compelled to do so, Succession of Touzanne, 36 La. An. 420; Allen *v.* Royston, 107 N. C. 278; or refused settlement and compelled resort to litigation, Dryfoos *v.* Cullinan, 17 Kan. 452; but see Post *v.* Stevens, 2 Beas. 293; or has taken presents from tenants and repairers of real estate. Jacobus *v.* Munn, 11 Stew. 622.

Mere neglect of duty will not deprive the executor of commissions, Ward *v.* Ward, 4 Redf. 34; nor irregularities, whether involving a loss, Gillespie *v.* Brooks, 2 Redf. 349; or not, Morgan *v.* Morgan, 4 Dem. 353; nor a mistake in distribution of the funds, Tiner *v.* Christian, 27 Ark. 306; but

see Matter of Hobson, 16 N. Y. Supp. 371. No allowance will be made for expenses caused by the administrator's misconduct, Robbins *v.* Wolcott, 27 Conn. 234; nor for services made necessary by his neglect, Matter of Moore, 72 Cal. 335; but see Bartlett *v.* Fitz, 59 N. H. 502; although his commissions will not be forfeited for mistake in judgment, Myer's Appeal, 62 Pa. St. 109; nor for a mistake in the figuring. Estate of Hoffer, 156 Pa. St. 473.

In some states commissions are forfeited by failure to make an annual accounting, Davidson *v.* Moore, 14 S. C. 251; Brooks *v.* Brooks, 12 S. C. 422; Lay *v.* Lay, 10 S. C. 208; Byrne *v.* Anderson, 67 Ga. 466; or for want of inventory or annual account, coupled with gross neglect, Grant *v.* Reese, 94 N. C. 720; or for failing to file the bond required. Matter of Baker, 35 Hun 272. In other states commissions are not lost for failure to make annual returns, Estate of Nelson, 15 Phila. 597; Gould *v.* Hayes, 19 Ala. 438; Lovett *v.* Thomas, 81 Va. 245; nor even for failure to account for thirty years, Matter of Barcalow, 2 Stew. (N. J.) 282; still less for the clerk's failure to file the account rendered, Sanderson *v.* Sanderson, 20 Fla. 292; and it is not necessary that the accounting should be by order of the court. Cram *v.* Cram, 2 Redf. 244.

END OF THE FOURTH PART.

*PART THE FIFTH.

OF REMEDIES.

BOOK THE FIRST.

OF REMEDIES FOR EXECUTORS AND ADMINISTRATORS.

In a previous part of this treatise (*a*), there has been occasion to investigate, what rights of action are comprised in the estate of an executor or administrator: It remains to consider the remedies by which those rights may be enforced.

It has been thought desirable in the following four chapters to keep the former headings "At Law" and "In Equity."

CHAPTER THE FIRST.

OF REMEDIES FOR EXECUTORS AND ADMINISTRATORS AT LAW.†

Instances where the executor has not the remedy.

It must be observed, in the commencement of this subject, that there are some cases where an executor or administrator, although he has an interest in a *chose in action*, is not entitled to the remedy: Thus, where one of two *joint* obligees, covenantees, or partners dies, the action on the contract must be brought in the name of the survivor, and the executor or administrator of the deceased cannot be joined, nor can he sue separately: For example, two joint-merchants appoint a person to be their factor: one dies, leaving an executor; this executor and the survivor cannot *join in an action against the factor; for the remedy survives, though not the duty; and therefore, on the recovery, the

(*a*) *Ante*, p.*693 *et seq.*

† See American note at end of this chapter.

survivor must be accountable to the executor for that (*b*). And the general rule is that though the right of a deceased partner devolves on his executor (*c*), yet the *remedy* survives to his companion, who alone must enforce the right by action, and will be liable, on recovery, to account to the executor or administrator for the share of the deceased (*d*).

Again, where two have the legal interest in the performance of a contract, though the benefit be only to one of them, the remedy survives, upon the death of the latter, and the executor or administrator of the deceased cannot be made a party, or sue separately: Thus, in Anderson *v.* Martindale (*e*), there was a covenant to and with A., his executors, administrators, and assigns, and to and with B. and her assigns, to pay an annuity to A., his executors, &c., during B.'s life: and it was held, that this was a joint covenant to A. and B., in which they had joint legal interest, although the benefit was for A. only; and that therefore, on the death of A., the right of action survived to B., and A.'s administrators could not sue on the covenant (*f*).

It follows, that where a contract is made jointly with several persons, and they all die, the executor or administrator of the survivor alone can sue, and the personal representatives of those who died before him cannot be joined.

But if the interest of the covenantees is several, and one of them dies, his executor may maintain a separate action on the covenant, notwithstanding the other covenantee be living: And if the *interest* be several, it shall make no difference that the *language* of the covenant is joint: Thus, *in Withers *v.* Bircham (*g*), by deed reciting the grant of two distinct annuities to A. and B. during the life of the grantors and the survivor, it was witnessed, that C. covenanted with

(*b*) Martin *v.* Crump, 2 Salk. 444.

(*c*) *Ante*, pp. *570, *734.

(*d*) Martin *v.* Crump, 1 Lord Raym. 340. Kemp *v.* Andrews, Carth. 171. Golding *v.* Vaughan, 2 Chit. Rep. 437, *per cur.* Rex *v.* Collectors of Customs, 2 M. & S. 225, by Dampier, J. 2 Saund. 117, note to Coryton *v.* Litheby. It appears, therefore, that the case of Hall *v.* Huffam, 2 Lev. 118, is not law.

(*e*) 1 East, 497.

(*f*) See Barford *v.* Stuckey, 2 Brod & Bingh. 333.

(*g*) 3 B. & C. 254. See White *v.* Tyndall, 13 A. C. 263, in which the House of Lords refused to treat a joint covenant in a lease as several, merely because the demise was to two as tenants in common. And Lord Fitzgerald pointed out that the rule that the covenant shall be measured and molded according to the interest of the covenantees had no application to the case of separate interests in covenantors.

A. and B. and their executors, to pay the annuities, or either of them, when the grantors should make default in payment: A. died: And it was held, that, the interest in the annuities being several, the covenant was also several, and that the annuity granted to A. being in arrear, his executor might maintain an action against C.

On the other hand, wherever the interest of the covenantees is joint, the rule of survivorship above stated will be enforced, although the covenant be in terms joint and several (*h*).

The rule is the same with respect to remedies in form *ex delicto* as those in form *ex contractu:* Therefore, if one or more of several parties jointly interested in property, at the time an injury was committed, is dead, the action must be in the name of the survivor, and the executor or administrator of the deceased cannot be joined, nor can he sue separately (*i*).

Executor of solicitor bringing action on his bill:

By the 37th section of the stat. 6 & 7 Vict. c. 73, it is enacted that no action shall be brought by any attorney or solicitor, or *by their executors, administrators,* or assignees, for the recovery of any fees, &c., until the expiration of one month after the delivery of a bill, &c., and upon the application of the party chargeable (*k*) with the bill delivered, the *bill and the attorney's or solicitor's, *or his executor's or administrator's,* or assignee's demand thereon, may be referred to be taxed; and if the bill, when taxed, be less by a sixth part than the bill delivered, then the attorney, his *executor, administrator,* or assignee, shall pay the costs (*l*).

taxation of bill of deceased solicitor.

By sect. 38 where any person, not the party chargeable, shall be liable to pay or shall have paid the bill, he or his personal representative may apply to have it taxed just as if the application were made by the party chargeable.

Parties.

If there are several executors or administrators, they must all join in bringing actions (*m*), though some be within the age

(*h*) See the authorities cited in the note to Eccleston *v.* Clipsham, 1 Saund. 154. See also 3 B. & C. 256; and Lane *v.* Drinkwater, 1 Cr. M. & R. 599.

(*i*) *Ante,* p.*734.

(*k*) The personal representative of the party chargeable, though not named, may also make the application: Jefferson *v.* Warrington, 7 M. & W. 137.

(*l*) If a solicitor dies pending an order for taxation, the proceedings may be revived by the client against the solicitor's representatives by an *ex parte* order: Re Nicholson, 29 Beav. 665; and they may, in the same way, revive the proceedings against the client: Re Waugh, *ibid.* 666.

(*m*) Bro. Exors. 88.

of seventeen years (*n*), or have not proved the will (*o*). Where, however, an executor renounces probate, or, being cited to take probate, does not appear, his rights in respect of the executorship shall wholly cease, and the representation of the testator devolve as if he had not been appointed (*p*), and he, therefore, need not be a plaintiff. Nor is an absconding executor a necessary party (*q*).

But if one alone of several executors or administrators brought an action either in form *ex contractu* or *ex delicto*, the defendant could formerly only take advantage of it by pleading in abatement (*r*).

*Now by R. S. C., 1883, Ord. XXI. r. 20, no plea or defense shall be pleaded in abatement, and by Ord. XVI. r. 11, "No cause or matter shall be defeated by reason of the misjoinder or nonjoinder of parties, and the Court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The Court or a Judge may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court or a Judge to be just, order that the names of any parties improperly joined, whether as plaintiffs or defendants, be struck out, and that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter be added. No person shall be added as a plaintiff, suing without a next friend, or as the next friend of a plaintiff under any disability, without his own consent in writing thereto."

It must be observed that if one executor of several alone sell goods

(*n*) Smith *v.* Smith, Yelv. 130.

(*o*) Brookes *v.* Stroud, 1 Salk. 3.

(*p*) 20 & 21 Vict. c. 77, s. 79. 21 & 22 Vict. c. 95, s. 16.

(*q*) Drage *v.* Hartopp, 28 C. D. 414. As to parties generally, see R. S. C. 1883, O. XVI.

(*r*) 1 Saund. 291, *l.* note. Tuckey *v.* Hawkins, 4 C. B. 655. Apparently, since the Judicature Act, the only mode of taking the objection of nonjoinder of one of several executors as a plaintiff, is by taking out a summons to add the executor as a plaintiff: Werderman *v.* Société Générale d'Electricité, 19 C. D. 246. The objection cannot be raised by plea in abatement or by demurrer, and the court will never dismiss an action for want of parties. In some cases, if a person who ought to be a plaintiff refuses, the court will make him a defendant: Van Gelder & Co. *v.* Sowerby Bridge, &c., 44 C. D. 374. Fairclough *v.* Marshall, 4 Ex. D. 37. As to the old practice, see 8th edition of this work, p. 1875, note (*r*).

of the testator, he alone may maintain an action for the price, not naming himself executor (*s*). So if goods be taken out of the possession of one of several executors, he may sue alone to recover them (*t*). And, generally, if one executor alone contracts on his own account alone, he *must* sue alone on such contract, notwithstanding the money recovered will be assets (*u*).

It is clear that two out of three co-executors may recover lands of their testator in ejectment on a joint claim (*x*).

Process.

Formerly, though the plaintiff sued as executor or adminis*trator, the writ of summons need not have stated his special character. But R. S. C., 1883, Order III. r. 4, provides that if the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, the indorsement of claim shall show in what capacity the plaintiff or defendant sues or is sued. And Order XVI. r. 8, provides that "Trustees, executors, and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the persons beneficially interested in the trust or estate, and shall be considered as representing such persons; but the Court or a Judge may, at any stage of the proceedings, order any of such persons to be made parties either in addition to or in lieu of the previously existing parties" (*y*).

Indorsement of writ.

Executors may sue and be sued as representing the estate.

Claims by or against an executor or an administrator as such, may be joined with claims by or against him personally.

By R. S. C. 1883, Ord. XVIII. r. 5, it is enacted that, "Claims by or against an executor or administrator as such may be joined with claims by or against him personally, provided the last-mentioned claims are alleged to arise with reference to the estate in respect of which

(*s*) Godolph. Pt. 2, c. 16, s. 1. Wentw. Off. Ex. 224, 14th edit. Brassington *v.* Ault, 2 Bingh. 177.

(*t*) Godolph. *ubi supra.* Wentw. Off. Ex. *ubi supra.*

(*u*) Heath *v.* Chilton, 12 M. & W. 632. *Ante*, p.*765.

(*x*) Doe *v.* Wheeler, 15 M. & W. 623.

(*y*) Where an administration order has been made, the judge of the Chancery Division in whose court such administration is pending may order the transfer to himself of any cause or matter pending in any other court or division brought by or against the executors or administrators of the testator or intestate whose assets are being administered: R. S. C. 1883, Ord. XLIX. r. 5. In Chapman *v.* Mason, 40 L. T. 678, it was decided that an action in another division against an executor will not be transferred under this rule if he is to be deemed personally liable: but in Re Timms, 26 W. R. 692, the action was ordered to be transferred, with liberty to continue it in the Chancery Division.

[*1778]

the plaintiff or defendant sues or is sued as executor or administrator."

Every action brought by an executor or administrator, where the cause of action accrues in the time of the deceased, must be brought in his representative capacity (*z*). But where the cause of action accrues after the death of the testator or *intestate, the executor or administrator may sue as such, or not, at his option (*a*). Thus, there has already been occasion to show (*b*), that, in respect of injuries done to the goods and chattels of the testator, after his death, the executor has his option, either to sue in his representative capacity or to bring the action in his own name and in his individual character. So it has already appeared, with respect to contracts made with the executor or administrator in that character, that the same option exists, wherever the money recovered will be assets (*c*).

Claim: when executor shall claim as such.

It was formerly necessary for an executor when he declared as such, to make a *profert in curia* of the letters testamentary; and for an administrator to make a *profert* of the letters of administration with a statement of the grant of the latter.† But by the Common Law Procedure Act (1852), s. 55, "It shall not be necessary to make *profert* of any deed or other document relied on in any pleading, and if *profert* shall be made, it shall not entitle the opposite party to crave oyer, or set out upon oyer such deed or other document."

Profert of letters of administration or probate unnecessary since the Common Law Procedure Act:

oyer abolished:

Before the law was thus altered, if an executor, declaring as such, made *profert* of the letters testamentary, not having, in fact, at that time obtained probate, the defendant, in order to raise the objection, must have demanded oyer; for if he had pleaded that the plaintiff never was nor is executor in manner and form as alleged in the declaration, the plaintiff would have succeeded on this issue, if he had obtained probate at any time before the trial (*d*); but by demanding oyer, the defendant made it impossible for the plaintiff to proceed,

(*z*) 1 Saund. 112, note to Dean of Bristol *v.* Guyse. Com. Dig. Pleader (2 D. 1). Gallant *v.* Bouteflower, 3 Dougl. 36, by Buller, J.

(*a*) 3 Dougl. 36, by Buller, J.

(*b*) *Ante*, p.*761 *et seq.*

(*c*) *Ante*, p.*762 *et seq.* See also Abbott *v.* Parfitt, L. R. 6 Q. B. 346. Moseley *v.* Rendell, L. R. 6 Q. B. 338.

† See American note at end of this chapter.

(*d*) Thompson *v.* Reynolds, 3 C. & P. 123. See *ante*, p.*251.

till he could produce the probate. The alteration of the law as to *profert* and oyer, has rendered this course impracticable; and it may place a debtor to the deceased in a situation of some hardship and difficulty, if he is *sued for the debt by one assuming to be the executor of the creditor, but who has not proved the will. For if the debtor pays the debt into court, he may be paying it to one who perhaps may never acquire a title to it by obtaining probate, and so be forced to pay it over again: On the other hand, if he pleads *ne unques executor*, and goes to trial of an issue joined on that plea, and the plaintiff has obtained probate in the meantime, it will, by relation, sustain the plaintiff's title to maintain the action, and the debtor will have to pay all the costs of the suit; though he has never disputed the debt and always been willing to pay it, if he could ascertain the person who was authorized to receive it. In order, therefore, to protect a defendant under such circumstances, the court, on its being shown that the plaintiff, who has declared or claims as executor, has not obtained probate, will stay proceedings until probate shall have been taken out and a reasonable time has elapsed after it shall have been submitted to the inspection of the defendant (*e*).

Set-off.

By R. S. C. 1883, Ord. XIX. r. 3, "A defendant in an action may set off, or set up by way of counterclaim against the claims of the plaintiff, any right or claim, whether such set-off or counterclaim sound in damages or not, and such set-off or counterclaim shall have the same effect as a cross action, so as to enable the Court to pronounce a final judgment in the same action, both on the original and on the cross claim." But this rule gives no right of set-off where none existed before the passing of the rule (*f*). And the cases on the repealed statutes of set-off (2 Geo. II. c. 22, s. 13; 8 Geo. II. c. 24, s. 4), which enacted that where either party sues or is sued as executor or administrator, where there are mutual debts between the testator or intestate and either party, one debt may be set against the other, would seem still to be applicable, except in so far as they conflict with the *rules of equity. These cases have established that in an action by an executor in his own name to recover money due to the testator in his lifetime and received by the defendant after his death, the defendant cannot set off a debt due to him

(*e*) Webb *v.* Adkins, 14 C. B. 401. Tarn *v.* Commercial Banking Co. of Sydney, 12 Q. B. D. 294.

(*f*) Re Milan Tramways Co., 22 C. D. 122. 25 C. D. 587.

[*1780] [*1781]

from the testator (*g*):† And the same rule holds where the plaintiff claims, *as executor*, for a debt due after the death of the testator (*h*). Again, if a stranger receives rent due to the testator in his lifetime, and afterward, by desire of the tenant in possession, pays the demand of ground rent, due at the same time, for the same premises, he may deduct *such payment in an action, by the executor, for the rents received; but he cannot deduct a payment of ground rent arising after the death of the testator (*i*).

In Henderson *v.* Henderson (*k*), an action was brought on a decree on the equity side of the Supreme Court of Newfoundland, awarding a sum of money to be paid by the defendant to the plaintiff; and the defendant, by his plea, after alleging that the plaintiff had sued in the Supreme Court, as the representative of a deceased person, pro-

(*g*) Shipman *v.* Thompson, Willes, 103. Tegetmeyer *v.* Lumley, 25 G. 3, B. R., reported in Durnford's note to Hutchinson *v.* Sturges, Willes, 264. So it was held, by Romilly, M.R., that where a creditor had purchased part of the intestate's goods from his administrator, he could not set off the price against a debt due to him from the intestate at his decease: Lambarde *v.* Older, 17 Beav. 542. Wrout *v.* Dawes, 25 Beav. 369.

† See American note at end of this chapter.

(*h*) Kilvington *v.* Stevenson, cited by Erskine from Yates' MS. in Tegetmeyer *v.* Lumley, *ubi supra*. Schofield *v.* Corbett, 11 Q. B. 779. Rees *v.* Watts, 11 Exch. 410, affirming Watts *v.* Rees, 9 Exch. 696, and overruling Mardall *v.* Thellusson, 18 Q. B. 857. See also 6 E. & B. 976. These decisions turned on the terms of the stat. 2 Geo. II. c. 38. The rule that a creditor of a testator cannot set off a debt due to him from the testator against a debt that became due from him to the executor of the testator is the same in equity: Hallett *v.* Hallett, 13 C. D. 232. Lambarde *v.* Older, 17 Beav. 542. Thus where G. died insolvent, having mortgaged an estate for his own life to secure an annuity granted by himself for his own life, and had also mortgaged a policy on his own life to the same mortgagees, to secure a sum of 4,000*l.*, and after the death of G. the mortgagees received in respect of the policy a sum more than sufficient to satisfy the amount secured on the policy, it was held that the mortgagees had no right to set off the balance against the executor in respect of arrears of the annuity: Re Gregson, 36 C. D. 223. The Judicature Act, by giving defendants a right to counterclaim, does not enable a defendant who has had notice of an administration suit to rely, in the shape of a counterclaim, on such set-off, since under the provisions of stat. 23 & 24 Vict. c. 38, s. 14, the Court of Chancery would have restrained an action in respect of it, and all proceedings by the defendant on the counterclaim would consequently be stayed by the court of the division of the High Court of Justice in which the action is brought. Newell *v.* National and Provincial Bank of England, 1 C. P. D. 496.

(*i*) Wilkinson *v.* Cawood, 3 Anstr. 905.

(*k*) 6 Q. B. 288.

[*1782]

ceeded to rely on a set-off for debts due from the deceased, or his estate, to the defendant: And it was held that this plea was bad; because the plaintiff was now suing in his own right, and the defense, if available at all, was one which ought to have been made in the Supreme Court.

There is no right either at law or in equity to deduct a loss on a policy, underwritten by a testator with a broker, from the amount due to the executors for premiums from the same broker (*l*).

Neither can a defendant set up by way of counterclaim against the claim of the plaintiff suing only in a distinct personal character claims against him personally and also as an executor (*m*), since Ord. XVIII. r. 5 (*n*) does not apply to a counterclaim.

Under J. A. 1873, sect. 24, the court will give effect to equitable defenses and grant relief on equitable grounds, and although the rule was as fully established in equity as at law, that demands due in different rights cannot be set off,—the principle being, that one's money shall not be applied to pay another man's debts,—yet a Court of Equity would have regard to the beneficial ownership of the debts, and would give effect to the right of set-off accordingly, notwithstanding any technical difficulties as to forms of action or the like (*o*). In Jones *v. Mossop (*oo*), where A. was indebted on bond to B.: B. died, leaving C. his sole next of kin, who obtained letters of administration of his estate: The estate of B., after all debts, &c., were paid, left a clear residue exceeding the amount of the bond debt: A. became surety for C. by joining in promissory notes: C. became an insolvent debtor, and A. was compelled to pay the notes: C. died, and then the assignee under his insolvency took out letters of administration *de bonis non* of B., and sued A. on the bond; it was held, that A. might set off the sums which he had been compelled to pay as surety for C. against the bond debt (*p*). But this case was decided on a clear admission by the defendant that the bond had become legally and equitably the property of C., that he had become the

(*l*) Beckwith *v.* Bullen, 8 E. & B. 683.

(*m*) Macdonald *v.* Carington, 4 C. P. D. 28.

(*n*) *Ante*, p. *1778.

(*o*) Jones *v.* Mossop, 3 Hare, 568. See also Baillie *v.* Edwards, 2 H. L. C. 74.

(*oo*) 3 Hare, 568.

(*p*) It must not, however, be understood that the mere existence of cross-demands was sufficient to constitute an equitable set-off as contradistinguished from the set-off at law. It will be found that this equitable set-off exists in cases where the party seeking the benefit of it could show some equitable grounds for being protected against his adversary's demand: Rawson *v.* Samuel, 1 Craig & Ph. 161, 178.

beneficial owner, and it was that beneficial ownership which had become vested in the assignee in his insolvency (*q*).

The only exception which equity has introduced into the principle of a legal set-off, is when the money is really and truly the property of one man in the name of another, not when the result of taking the accounts would be to show that the ultimate balance would be his property. Therefore, where an executorship account was kept with bankers in the joint names of two executors, and one of the executors, who was residuary legatee under the will, kept another account of his own with the bankers, and the bankers filed a liquidation petition, and at that time there was a balance standing to the credit of the joint account, but the other account was overdrawn, it was held that the one account could not be set off against the other in the liquidation of the bankers (*r*).

*In Bailey *v.* Finch (*s*), where a bank stopped payment and the trustee brought an action against a customer to recover the amount for which his account was overdrawn, the customer was allowed to set off a sum due to him on an account which he had opened as executor but to which as residuary legatee he was beneficially as well as legally entitled. But in this case there was a legal right of set-off because both the accounts were the accounts of one person and at law there was a right of set-off, and it was attempted to preclude that right by the fact that one of the accounts had been opened in the name of the customer as executor. There was a legal right to set-off, and the question was whether there was a sufficient equitable ground for preventing the legal right from taking effect.

In Bridges *v.* Smyth (*t*), the Court of Common Pleas held, that a judgment for the plaintiff in that court might be set off against a judgment for the defendant in the King's Bench, although the plaintiff was dead and the judgment was assets in the hands of her administrator: In that case, Mrs. Bridges had judgment against Miss Smyth in the Common Pleas, in two actions, to the amount of 816*l.* 15*s.*; and Mrs. Bridges dying after the judgments were entered up, Frowd, her attorney, who claimed to be a judgment creditor, had taken out letters of administration: Miss Smyth had a judgment in the King's Bench to the amount of 3,052*l.* against Mrs. Bridges, and Frowd was requested to set off the 816*l.* 15*s.* against the 3,052*l.*: This he refused to do, on

(*q*) See *per* James, L.J., in *Ex parte* Morier, 12 C. D. 491, 497.

(*r*) *Ex parte* Morier, 12 C. D. 491.

(*s*) L. R. 7 Q. B. 34.

(*t*) 8 Bing. 29.

the ground that, she being dead, and he being her administrator, the judgments in the Common Pleas were in a different right, and could not be set off, without compromising the interest of the creditors: But the Court of Common Pleas ordered satisfaction to be entered on the judgment rolls in that court, upon acknowledging satisfaction for 816*l.* 15*s.* on the judgment for 3,052*l.* in the King's Bench.

In answer to a set-off, the executor or administrator may give in evidence the advance of money by him *as executor* or administrator to the defendant (*u*).

defense of Statute of Limitations:

*Where, in *assumpsit* by an executor, in which all the promises were laid to be made *to the testator* in his lifetime, the defendant pleaded that he did not promise within six years † next before the obtaining of the original writ of the plaintiff, and the plaintiff replied that the original was sued on such a day, and that within six years before the day of obtaining thereof, that is to say, on such a day, letters testamentary were granted to him, by which the plaintiff's action accrued to him within six years; this replication was held bad; because the time of limitation must be computed from the time when the action first accrued to the testator, and not from the time of proving the will; for that gave no new cause of action, and therefore the time of proving the will is perfectly immaterial (*x*).

But where to an action by an administrator for money had and received to his use by the defendant, who had received the intestate's money *after his death*, six years and upward before the commencement of the action, but within six years after letters of administration granted to the plaintiff, the defendant pleaded the Statute of Limitations, and the plaintiff replied the special matter above mentioned; it was held, upon demurrer, that the statute was no bar, because this was not a cause of action in the intestate, the money having been received after his death, and the plaintiff's title commenced by taking out letters of administration, before which time no cause of action accrued to him (*y*). So where an action was brought by an administrator against the acceptors of bills of exchange payable to the intestate, and accepted after his death, but before the

(*u*) Gallant *v.* Bouteflower, 3 Dougl. 34.

† See American note at end of this chapter.

(*x*) Hickman *v.* Walker, Willes, 27. 2 Saund. 63, *k*, note to Hodsden *v.* Harridge.

(*y*) Cary *v.* Stephenson, 2 Salk. 421. 4 Mod. 372. See Stanford's case, cited Cro. Jac. 61.

[*1785]

grant of letters of administration, it was held that the statute ran only from the grant of the letters (*z*).

*It must be observed, that where, in *assumpsit* by an executor, on a contract made with *his testator*, all the promises in the declaration were laid to be made to the testator, and the defendant pleaded the Statute of Limitations, the plaintiff could not in his replication set forth a promise made to *himself* within six years, without being guilty of a departure, any more than he could in such case give evidence of a promise made to himself within six years upon an issue joined on the plea of the Statute of Limitations (*a*). Therefore, where it was necessary to rely on an acknowledgment, made since the death of the testator, to bar the statute, counts were required in the declaration laying promises to the plaintiff as executor (*b*).

Accordingly, if an executor brought an action on a bill or note, and intended to rely on an acknowledgment or promise made to himself in order to bar the statute, he had to state in his declaration the making of the bill or note, and must then have proceeded to aver that after the death of his testator or intestate, the defendant promised him (the plaintiff) as executor or administrator, to pay him. And where the declaration was so framed, such promise might have been denied by a plea of *non-assumpsit*, notwithstanding the rule of pleading, H. T. 1853, r. 7, that in all actions upon bills of exchange and promissory notes, the plea of *non-assumpsit* should be inadmissible: For the mere production and proof of the note would not prove the promise as made *to the executors*, as it would if the promise were laid as made *to the testator:* The right of action indeed is transferred to the executor, but no promise is implied by law to pay him; otherwise the Statute of Limitations would run from the death of the payee, and not from the time of the note becoming due: In order, therefore, to support the action, there must be an express promise to the *executor, that is to say, an express promise as contradistinguished from a promise contained in the note itself, or anything implied out of it; and the cause of action is the existence of the note, *with* the express promise to the executor to pay the amount of it;

(*z*) Murray *v.* E. I. Company, 5 B. & A. 204. See also *ante*, p. *552. Pratt *v.* Swaine, 8 B. & C. 285. Perry *v.* Jenkins, 1 Ny. & Cr. 118.

(*a*) Hickman *v.* Walker, Willes, 29. Dean *v.* Crane, 1 Salk. 28. Executors of the Duke of Marlborough *v.* Widmore, 2 Stra. 890. 2 Saund. 63, *l.*

(*b*) As to what is sufficient evidence of an account stated with the plaintiff as executor, see Purdon *v.* Purdon, 10 M. & W. 562.

[*1786] [*1787]

whereas the rule is confined to cases where the action is *only* on the note (*c*): The effect of the plea of *non-assumpsit* was in such a case to admit that the bill or note was signed by the defendant, but to deny that he made any promise to the executor.

In Clark *v.* Hooper (*d*), payment of interest on a promissory note to an administrator, who had omitted to take out administration in the diocese in which the note was a *bonum notabile*, was held a sufficient acknowledgment of the debt to bar the statute.

The statute is an answer to an action by an executor for a debt due to the testator for which he might have sued more than six years before the issue of the writ, although the action was commenced within a reasonable time after the death (*e*).

Where a plaintiff died, the obsolete writ by journeys accounts could not be brought by his executor (*f*).

Writ by journeys accounts.

Action by executor or administrator after expiry of six years.

*However, where a party brings an action before the expiration of six years, and dies before judgment, the six years being then expired, it has been held that

(*c*) Timmis *v.* Platt, 2 Mees. & W. 720. Gilbert *v.* Platt, 5 Dowl. 748. Rolleston *v.* Dixon, 2 Dowl. & L. 892.

(*d*) 10 Bing. 840.

(*e*) Penny *v.* Brice, 18 C. B. N. S. 393. If, however, a creditor dies intestate on the day on which a debt becomes payable to him, and there is no evidence to show whether he died before or after the moment when the debt becomes payable, the statute does not begin to run against the creditor's administrator until letters of administration have been taken out: Atkinson *v.* Bradford Third Equitable Benefit Building Society, 25 Q. B. D. 377, 381, in which case there was no cause of action which the testator could have maintained.

(*f*) Kinsey *v.* Heyward, 1 Lord Raym. 432. If a writ abated without the default of the plaintiff, he might have had a new writ by journeys accounts, *i.e.*, *per dietas computatas:* The word *dieta* means a day's journey; and the origin of the expression is said to be, that the Court of Chancery, being a movable court, and following the King's Court, and the writs being to be purchased out of Chancery, the party was bound to apply to the King's Court as hastily as the distance of the place would allow, accounting twenty miles for every day's journey; and, for this reason, he was to show that he had purchased it as hastily as possible, accounting the days' journeys he had to the court: 1 Lord Raym. 433. Termes de la Ley, Art. Journies Account. Com. Dig. Abatement, P. There are some authorities for the proposition that the writ by journeys accounts is a continuance of the former writ. But Lord Coke calls it "*quodam modo*, a continuance:" And Lord Lyndhurst, C., in Davies *v.* Lowndes, 1 Phill. 328. 6 M. & Gr. 529, and the Court of Common Pleas in a further stage of the same cause, 7 M. & Gr. 762, expressed a very strong opinion that it is not a continuance, strictly and properly, of the old writ, but is a new writ.

[*1788]

his executor or administrator may, within the equity of the fourth section of the Statute of Limitations (21 Jac. I. c. 16), bring a new action (*g*); provided he does it recently, or within a reason*able time. No precise time is fixed as to what shall be deemed a reasonable time; but it should seem that the statute is the best guide upon the subject, and as that provides that a new action, in the cases enumerated in it, must be commenced *within a year*, so an executor ought also to bring a new action within that period (*h*). In Kinsey *v.* Heyward (*i*), a year is said to be a reasonable time; and the Court

(*g*) Matthews *v.* Phillips, 2 Salk. 425. Kinsey *v.* Heyward, 1 Lutw. 260. The remedy by fresh action would seem, from the case of Swindell *v.* Bulkeley, 18 Q. B. D. 250, to be still open to executors. In this case the defendant died, and a fresh action against his executors within a year of probate was held to lie, though in the meantime the six years had expired. But R. S. C. Ord. XVII. r. 4, also provides a new remedy by enabling the personal representatives to obtain an order to carry on the proceedings between themselves and the other party to the action, where, by reason of death after the commencement of the action, a change or transmission of interest or liability has taken place. By Ord. XVII. r. 1, "A cause or matter shall not become abated by reason of the marriage, death, or bankruptcy of any of the parties, if the cause of action survive or continue, and shall not become defective by the assignment, creation, or devolution of any estate or title *pendente lite;* and whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the verdict or finding of the issues of fact and the judgment, but judgment may in such case be entered, notwithstanding the death." By rule 2, "In case of the marriage, death, or bankruptcy, or devolution of estate by operation of law, of any party to a cause or matter, the Court or a Judge may, if it be deemed necessary for the complete settlement of all the questions involved, order that the husband, personal representative, trustee, or other successor in interest, if any, of such party be made a party, or be served with notice." And rule 4 of the same Order is as follows: "Where by reason of marriage, death, or bankruptcy, or any other event occurring after the commencement of a cause or matter and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the cause or matter, it becomes necessary or desirable that any person not already a party should be made a party, or that any person already a party should be made a party in another capacity, an order that the proceedings shall be carried on between the continuing parties, and such new party or parties, may be obtained *ex parte* on application to the Court or a Judge, upon an allegation of such change or transmission of interest or liability, or of such person interested having come into existence." An executor or administrator so joined, even after judgment, becomes personally liable to all the costs *ab initio:* Boynton *v.* Boynton, 4 A. C. 733.

(*h*) 2 Saund. 64, *a.* note to Hodsden *v.* Harridge.

(*i*) 1 Lord Raym. 434.

[*1789]

of King's Bench appears to be of this opinion in Wilcox *v.* Huggins (*k*), where it is said, that the most that had ever been allowed was a year, and that within the equity of the proviso in the statute, which gives the plaintiff a year to commence a new action, where the judgment is arrested or reversed; and that they would not go a moment further, for it would let in all the inconveniences which the statute was made to avoid: Indeed if the executor had been retarded by suits about the will or administration, and had shown that in pleading, it would have been otherwise, because the neglect would then have been accounted for: And Lee, J., said, "I think what is or is not a recent prosecution in a case of this nature, is to be determined by the discretion of the Court from the circumstances of the case; but generally, the year in the statute is a good direction." However, in Lethbridge *v.* Chapman (*l*), the action was allowed to be brought within fourteen months after the testator's death, though no reason was assigned for it. Upon the whole, therefore, it was deemed prudent for the executor to bring a new action as soon as he possibly could after the *death of his testator, and at all events not to delay it beyond a year (*m*). But in Curlewis *v.* Lord Mornington (*n*), it was expressly held, that the executor was not bound to the year, if under the circumstances he can fairly be said to have used due diligence.

The form of the replication by an executor to a plea of the statute, where he recently brought a new action after the death of the testator, was to state, that the testator, on such a day sued out a writ of summons against the defendant, whereby he was commanded, &c., (and then continuing the writ down to the time of the testator's death); that he appointed the plaintiff as executor, and recently after his death, to wit, on such a day, &c., the plaintiff sued out the writ upon which the action is founded; that the several writs so prosecuted by the testator against the defendant were with an intent to have impleaded the defendant upon the several promises in the declaration specified; and that the writ sued out by the plaintiff against the defendant was prosecuted against him with an intent to implead him for the causes of action in the declaration specified, and upon his appearance to declare against him for the said several causes of action, and that he afterward, on, &c., declared against the defendant, &c., with an averment that the several causes of action accrued

(*k*) 2 Str. 207. Fitg. 170, 289.
(*l*) 15 Vin. 103, *in margine*.
(*m*) 2 Saund. 64, *b*. note.
(*n*) 7 E. & B. 283. S. C. in error. 27 L. J. Q. B. 439.

[*1790]

within six years next before the suing out of the writ first above specified by the testator (*o*).

Again, if an executor brought *assumpsit*, but died before judgment and the six years run, his executor might, notwithstanding, bring a fresh action, so as he brought it in a reasonable time, which is to be decided at the discretion of the justices upon the circumstances of the case (*p*).

The principle of these cases, according to the judgment of Lord Chief Justice Treby, in the above-mentioned case of Kinsey *v.* Heyward (*pp*), is, that when once the proviso in the Statute of Limitations is complied with by the commence*ment of an action within due time, the party is out of the purview of the act, and set at liberty out of the restraint of the said statute. But the true ground of these decisions appears to be that they proceed upon the equity of the fourth section of the statute, and that the courts have extended that section to the case of an executor whose testator has died pending an action brought by him; which, though not within the words of it, was evidently within the mischief (*q*). And the same equitable construction that has been applied, as above mentioned, to the 4th section of the Statute of James, has been followed as to the limitation of actions on bonds, &c., imposed by the stat. 3 & 4 Wm. IV. c. 42, s. 3 (*r*).

Where the right of action accrued to the testator during his residence abroad, and he died abroad, never having returned to this country after the accrual thereof, the statute was held to be no bar to an action by his executors, although the right of action accrued more than six years before action brought; at all events if it be brought within six years after his death (*s*), the case being saved by the 7th section of the Statute of James, (which provides that if the person entitled shall be abroad at the time the cause of action accrued, such person may bring his action within six years of his return from beyond the seas), though not strictly within the words of it (*ss*). It

(*o*) 2 Saund. 64, *c.* note.

(*p*) Bull. N. P. 150, *a.*

(*pp*) 1 Lord Raym. 434.

(*q*) Adam *v.* The Inhabitants of the City of Bristol, 2 A. & E. 385, 403.

(*r*) Sturgis *v.* Darrell, 4 H. & N. 622. S. C. in error, 6 H. & N. 120.

(*s*) Townsend *v.* Deacon, 3 Exch. 706. See also Forbes *v.* Smith, 11 Exch. 161.

(*ss*) The 7th section of 21 Jac. c. 16, remains unrepealed, but so far as absence beyond seas of a plaintiff is concerned seems to be impliedly repealed by 19 & 20 Vict. c. 97, s. 10, which statute was passed subsequently to the above cases of Townsend *v.* Deacon and Forbes *v.* Smith. Probably, however, an executor would not be barred till

[*1791]

has, indeed, been affirmed that the executor may bring the action at any time, on the ground that the case is out of the statute altogether: *But the more reasonable equity, perhaps, is to consider the right of action as accruing to the executor at the death of the testator, and that the action ought to be brought within six years after that time.

Denial of right of person in representative capacity.

By R. S. C. 1883, Ord. XXI. r. 5, it is provided that:—"If either party wishes to deny the right of any other party to claim as executor . . . or in any representative or other alleged capacity . . . he shall deny the same specifically."

Where the plaintiff claims in trespass or trover, on his *constructive* possession as executor or administrator, he should sue as executor or administrator (*t*).

But where the executor has been in *actual* possession of the property which was the subject of the suit, it would not be necessary for him to claim or give evidence of his title as executor or administrator, in an action against a wrongdoer (*u*).

What is sufficient proof of the plaintiff being executor, &c.:

It remains to consider, what shall be sufficient evidence of the plaintiff's title as executor or administrator, when it becomes necessary to prove it, either when the representative character of the plaintiff is specifically denied, or in a suit on a cause of action arising in the plaintiff's own time.†

probate:

Although the executor derives his title from the will by which he is appointed, and not from the probate of the will, yet it is the probate alone which authenticates his right, and the probate, or something tantamount thereto, is the only legitimate evidence of personal property being vested in an executor, or of the executor's appointment (*x*). Therefore, the original will cannot be read in evidence for that purpose, although produced by the officer of the Court of Probate, unless it bears the seal of the court, or some other mark of authentication (*y*). The seal of the Court of Probate on the probate proves itself (*z*).

after six years from the death of the testator, on the ground suggested in the text, viz., that the right of action of the executors did not accrue until the testator's death.

(*t*) *Ante*, p.*252.

(*u*) *Ante*, p.*253. But see also Waller *v.* Drakeford, 1 E. & B. 49.

† See American note at end of this chapter.

(*x*) *Ante*, p. *243. Hamilton *v.* Aston, 1 Carr. & Kirw. 679.

(*y*) R. *v.* Barnes, 1 Stark. N. P. C. 243. Pinney *v.* Pinney, 8 B. & C. 385: Nor is a copy of the will evidence: Bull. N. P. 246.

(*z*) Court of Probate Act, 20 & 21 Vict. c. 77, s. 22. See also S. P. before the act passed, Kempton *v.* Cross, Cas. temp. Hardw. 108.

*If the probate is lost, it was not the practice of the Ecclesiastical Court to grant a second, but only an exemplification from the records of the court; which would be evidence of the proving the will (*a*). And an examined copy of the probate is evidence of the person there named being executor; because the probate is an original, taken by authority, and of a public nature (*b*).

When probate is lost.

It must be observed, that all that is required, either in the case of an executor or administrator, is to show by legitimate evidence that the Court of Probate has given authority to the person to administer: It is only the act of the Court of Probate that is to be proved: The probate is only a copy of this act: The original book containing the entry of the act of court is the original, and therefore the primary evidence: Hence the act-book, containing an entry of a will having been proved, and of probate granted to the executors therein named, is admissible evidence of those persons being the executors, without accounting for the non-production of the probate (*c*).

And now, since it is provided by R. S. C. 1883, Order XXXVII. r. 4, that office copies of all writs, records, pleadings, and documents filed in the High Court shall be admissible in evidence in all causes and matters, and between all persons or parties, to the same extent as the original would be admissible, it would seem that an office copy of the record from the Probate Registry is good evidence of the executor's or administrator's title.

To prove that the probate of a will had been revoked, an entry of the revocation in a book of the Prerogative Court, in which all causes were entered by the registrar, and which was kept as the only record of such proceedings, and of the decree of the court, was admitted to be good evidence (*d*).

Proof of revocation of probate.

*The title of several plaintiffs, claiming as executors, is well evidenced by probate, granted to one only, of the will appointing them all (*e*): And the rule was the same whether they sued in their representative character or not (*f*); for probate granted to one of several executors enures to the benefit of all (*g*).

(*a*) Shepherd *v.* Shorthose, 1 Stra. 412. Bull. N. P. 246.

(*b*) Hoe *v.* Nelthorpe, 3 Salk. 154. S. P. by Holt, C. J., in R. *v.* Haines, Skinn. 584. Bull. N. P. 246.

(*c*) Cox *v.* Allingham, Jacob. 514.

(*d*) Ramsbottom's case, 1 Leach, Cr. C. 60, n. (*c*). And see R. S. C. 1883, Ord. XXXVII. r. 4, *supra*.

(*e*) Walters *v.* Pfeil, 1 Mood. & Malk. 362. Scott *v.* Briant, 6 Nev. & M. 381.

(*f*) Mood. & Malk. 362.

(*g*) *Ante*, p. *320. Watkins *v.* Brent, 7 Sim. 512.

Proof of letters of administration:

The title of an administrator *de bonis non* is sufficiently proved by the letters of administration *de bonis non*, without those granted to the first executor or administrator (*h*).

Where an executor or administrator produces the probate or letters in proof of his representative character, and his case shows that he sues for a greater value than is covered by the probate or administration stamp, he cannot recover (*i*).

The title of the plaintiff, as administrator, may be proved by the production of the letters of administration, or of a certificate or exemplification thereof granted by the Court of Probate (*k*), or, without producing the letters of administration, by the original book of acts, directing the grant of the letters (*l*); or by a copy of it under R. S. C. 1883, Order XXXVII. r. 4. The original book of acts, directing letters of administration to be granted, with the surrogate's *fiat* for the same, was held to be evidence of the title of the party, to whom administration of the intestate's effects is granted, without producing the letters of administration themselves (notwithstanding subsequent letters of administration granted to another), if the first are not recalled; for the original book was the authority for the proper officer to make out letters of administration, and the letters of admi*nistration were only the copy of the original minutes of the court, drawn up in a more formal manner (*m*). So an examined copy of the act-book, stating that administration was granted to the defendant at such a time, is proof of his being administrator in an action against him, without giving him notice to produce his letters of administration (*n*).

There has already been occasion to consider how far a probate or letters of administration, when produced by the plaintiff, are conclusive upon the defendant (*o*). But it may be convenient, in this place, to recapitulate some of the points established on this subject.

(*h*) Catherwood *v.* Chabaud, 1 B. & C. 150. See also Gradell *v.* Tyson, 2 Stra. 716.

(*i*) See *ante*, p. *508 *et seq.*, as to the amount of stamp. Hunt *v.* Stevens, 3 Taunt. 113. Carr *v.* Roberts, 2 B. & Ad. 905.

(*k*) Kempton *v.* Cross, Cas. temp. Hardw. 108.

(*l*) *Ibid.* Elden *v.* Keddell, 8 East, 187. Ramsbottom *v.* Buckhurst, 2 M. & S. 567.

(*m*) Elden *v.* Keddell, 8 East, 187. Garrett *v.* Lister, 1 Lev. 25.

(*n*) Davis *v.* Williams, 13 East, 232.

(*o*) *Ante*, p. *464 *et seq.*

[*1795]

The defendant cannot prove that another person was appointed executor or administrator, or that the testator was insane, or that the will, of which probate had been granted, was forged: for that would be directly contrary to the seal of the Court of Probate in a matter within its immediate jurisdiction (*p*).

Evidence for defendant.

But it may be proved that the supposed testator or intestate is alive; for in such case, the Court of Probate can have no jurisdiction (*q*). And it may be shown, that the seal attached to the supposed probate has been forged, or that the letters have been revoked (*r*).

Again, the defendant may plead in his defense, that he has paid the debt, which is the subject of the action, to an executor who had obtained probate of a forged will, unrepealed at the time of the payment (*s*). But payment of money under the probate of a supposed will of a living person would be void; because, in such case, the Court of Probate has no jurisdiction, and the probate can have no effect (*t*).

It may be doubted whether admissions made by an executor or administrator, before he was clothed with that character, *are receivable in evidence against him in an action brought by or against him in his representative capacity (*u*).† However, in Smith *v.* Morgan (*x*), Tindal, C. J., admitted the declaration of the assignees of a bankrupt made by them before their appointment, stating that he was not aware of any distinction between the admissions of parties suing in a representative character and in their own right (*y*).

Whether admissions made by an executor, &c., before appointment, are receivable against him as executor:

The admission of one of several executors or administrators will not bind the others; at all events, unless it is made in the character of executor. Therefore where two executors were sued as such on a covenant of their testator for quiet enjoyment, and the question was whether the defendants who had

Admissions by co-executor.

(*p*) *Ante*, pp.*464 *et seq.*

(*q*) *Ante*, p.*478.

(*r*) *Ante*, p.*478.

(*s*) *Ante*, p.*466. Allen *v.* Dundas, 3 T. R. 125.

(*t*) *Ibid.* 130.

(*u*) See Stewart *v.* Edmonds, *ante*, p. *344, note (*c*).

† See American note at end of this chapter.

(*x*) 2 M. & Rob. 257.

(*y*) See *contra*, Fenwick *v.* Thornton, M. & M. 51, *coram* Lord Tenterden.

[*1796]

evicted the plaintiff had done so under lawful title, it was held that an admission of *one* of the defendants was no evidence of such title (*z*).

Costs.

Executors and administrators instituting or defending actions are subject to the same rules as to costs, as they would be if they were suing or defending in their own right (*a*). The awarding of costs in the Supreme Court is governed by R. S. C. 1883, Order LXV. r. 1, which provides as follows:—"Subject to the provisions of the Acts and these Rules, the costs of and incident to all proceedings in the Supreme Court, including the administration of estates and trusts, shall be in the discretion of the Court or Judge: Provided that nothing herein contained shall deprive an executor, administrator, trustee, or mortgagee who has not unreasonably instituted or carried on or resisted any proceedings, of any right to costs out of a particular estate or fund to which he would be entitled according to the rules hitherto acted upon in the Chancery Division (*b*): Provided also that, where any action, cause, *matter, or issue is tried with a jury, the costs shall follow the event, unless the Judge by whom such action, cause, matter, or issue is tried, or the Court, shall, for good cause, otherwise order."

Plaintiffs who live out of the jurisdiction of the court may be compelled to give security for costs, though such plaintiffs sue as executors (*c*).

Remedy on judgment obtained by testator.

By Order XLII. r. 23, it is provided: "In the following cases, *viz.*, (*a*) where six years have elapsed since the judgment or date of the order, or any change has taken place by death or otherwise in the parties entitled or liable to execution . . . the party alleging himself to be entitled to execution may apply to the Court or a Judge for leave to issue execution accordingly." This seems to be the proper procedure in cases where

(*z*) Fox *v.* Waters, 12 A. & E. 43. See also Scholey *v.* Walton, 12 M. & W. 510.

(*a*) 2 Dan. C. P. 6th edit. c. 19, s. 2, p. 1175.

(*b*) As to when payment of costs out of the fund will be ordered, see Dan. C. P. 6th edit. c. 19, s. 3, pp. 1206 *et seq.*

(*c*) Chevalier *v.* Finnis, 1 Brod. & Bingh. 277. Chamberlain *v.* Chamberlain, 1 Dowl. 366. Knight *v.* De Blaquière, Sau. & Sc. 658. In an action by two executors, one of whom is out of the jurisdiction and the other insolvent, the defendant is not entitled to a stay of proceedings until they give security for costs: Sykes *v.* Sykes, L. R. 4 C. P. 645.

[*1797]

the executor seeks to issue execution upon a judgment obtained by the testator (*d*).

Until the executor or administrator had made himself a party to the judgment, he was not entitled, under the 61st section of the Common Law Procedure Act, 1854, to attach a debt due to the judgment debtor (*e*). Whether under the Judicature Act he would be entitled to proceed under Order XLII. r. 23, or whether he would have to make himself a party under Order XVII. r. 4, would seem to depend on *whether the judgment of Lord Coleridge, C. J., or that of Stephen, J., in Fellows *v.* Thornton (*f*), is right.

Relief by *audita querela* now abolished.

If an executor or administrator obtained judgment, and then the probate or letters of administration were revoked, the regular mode for the defendant to obtain relief was by an *audita querela* (*g*); but now, by Order XLII. r. 27, it is provided that "no proceeding by *audita querela* shall hereafter be used; but any party against whom judgment has been given may apply to the Court or a Judge for a stay of execution or other relief against such judgment, upon the ground of facts which have arisen too late to be pleaded; and the Court or Judge may give such relief and upon such terms as may be just."

County Court Act, 1888.

By stat. 51 & 52 Vict. c. 43, s. 95, "it shall be lawful for any executor or administrator to sue and be sued in the County Court in like manner as if he were a party in his own right, and judgment and execution shall be such as in the like case would be given or issued in the High Court."

Presentment of bill of exchange by executor.

If the holder of a bill be dead, and the executor has not yet proved the will, it is said that the bill must, nevertheless, be presented for payment at the regular time: but it should seem, that the drawer and indorsers would not be discharged, pro-

(*d*) See *ante*, p. *780. Re Shephard, 43 C. D. 131. If the writ of execution was issued in the testator's lifetime, it might have been executed after his death: Ellis *v.* Griffith, 16 M. & W. 106. The executor of a creditor who has obtained a final judgment is not entitled to issue a bankruptcy notice against the judgment debtor, unless he has obtained leave from the court, under Ord. XLII. r. 23, to issue execution on the judgment. Under sub-sect. 1 (g) of sect. 4 of 46 & 47 Vict. c. 52, Bankruptcy Act, 1883, the creditor who issues a bankruptcy notice must be in a position to issue execution on the judgment: *Ex parte* Woodall, 13 Q. B. D. 479, 53 & 54 Vict. c. 71, s. 1, Bankruptcy Act, 1890.

(*e*) Holmes *v.* Tutton, 5 E. & B. 65.

(*f*) 14 Q. B. D. 335.

(*g*) Turner *v.* Davies, 2 Saund. 148.

vided presentment be made, and notice given of the dishonor, by the executor or administrator, in a reasonable time (*h*).

(*h*) See Roscoe on Bills, 147. Mr. Justice Byles, in his book on Bills, 14th ed., Chap. V., pp. 60, 61, says: "If the holder be dead, and the executor have not proved the Will, still it seems that the executor is bound to present the bill when presentable, for his title to his testator's property is derived exclusively from the Will, and vests in him from the moment of the testator's death. But as the title of an administrator is derived wholly from the ecclesiastical court, and he has none till the letters of administration are granted, he probably would be excused by impossibility." The Bills of Exchange Act, 1882, does not directly deal with the matter, but sect. 46 provides that "delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence."

---

† *Right of action—In whom.* In general, where an action survives to the personal representative of the deceased, it is vested in him exclusively. Foglesong *v.* Wickard, 75 Ind. 258. And the fact that he is beneficially interested as a distributee does not affect his right. Trimmier *v.* Thomson, 10 S. C. 164. At law or in equity he is the only person entitled to sue, whether the object of the suit be the collection of a debt due the deceased, McCoy *v.* Payne, 68 Ind. 327; Guthrie *v.* Kerr, 85 Pa. St. 303; Baird *v.* Brooks, 65 Ia. 40; Tappan *v.* Tappan, 30 N. H. 50; Wood *v.* Cosby, 76 Ala. 557; or the recovery of personal property, Huddleston *v.* Huey, 73 Ala. 215; Caleb *v.* Hearn, 72 Me. 231; Jones *v.* McCleod, 61 Ga. 602; Hillman *v.* Schwenk, 68 Mich. 297; Pond *v.* Sweeton, 85 Ind. 144; or of damages for its conversion, Douglass *v.* McCaur, 80 Ind. 91; or to compel the accounting of a representative who has been removed, McDonald *v.* O'Connell, 10 Vroom 317; or for the breach of a trust (against the trustee's bond), Richardson *v.* Cooley, 20 S. C. 347; or the avoidance of a fraudulent conveyance made by the deceased, Frost *v.* Libby, 79 Me. 56; Jones *v.* McCleod, 61 Ga. 602; or the enforcement of the decedent's promise to subject such property to the payment of a particular debt, Carr *v.* Huette, 73 Ind. 378; or the recovery of a legacy due to the deceased, Trafford *v.* Wilkinson, 3 Tenn. Ch. 449; Sullivan *v.* Lawler, 72 Ala. 68; Gale *v.* Nickerson, 151 Mass. 428; or of a distributive share in the estate of another decedent. George *v.* Elms, 46 Ark. 260. This applies also to the personal representative of a trustee (suing for royalties due on patent licenses granted by the trustee), Keller *v.* West &c. Manufacturing Co., 39 Hun 348; or to the representative of a deceased guardian (suing on a judgment recovered by the guardian for moneys of the trust estate), Zellner *v.* Cleveland, 69 Ga. 631); the title in such case having never been in the *cestui que trust* or ward.

The personal representative may sue the widow for moneys deposited by the deceased with her for safe keeping and

wrongfully held by her after his death, Lawson *v.* Lawson, 16 Gratt. 230; but not (for want of privity of contract) for a savings bank deposit in the name of the deceased which the widow had claimed adversely and withdrawn from the bank without authority. Nolan *v.* Manton, 17 Vroom 231. So, where a testator bequeathed money to his wife, with power to use the principal, if necessary, for her support, with remainder (undisposed of at her death) to the children, and she held at her death securities representing the fund, the children, and not the father's executors, were held to be the proper parties to sue for them. Smith *v.* Van Ostrand, 64 N. Y. 278. So, where the executor had delivered to a tenant for life personal property bequeathed to him, and such tenant had retained it until death, the executor could not as such sue a third person to recover possession of it. Weeks *v.* Jewett, 45 N. H. 540.

Suit for the collection or recovery of assets cannot be brought by a creditor, McCoy *v.* Payne, 68 Ind. 327; Frost *v.* Libby, 79 Me. 56; McDonald *v.* O'Connell, 10 Vroom 317; Carr *v.* Huette, 73 Ind. 378; Jones *v.* McCleod, 61 Ga. 602; or a legatee, Guthrie *v.* Kerr, 85 Pa. St. 303; Hillman *v.* Schwenk, 68 Mich. 297; or by the widow or next of kin, Huddleston *v.* Huey, 73 Ala. 215; George *v.* Elms, 46 Ark. 260; Douglass *v.* McCaur, 80 Ind. 91; Richardson *v.* Cooley, 20 S. C. 347; Pond *v.* Sweeton, 85 Ind. 144; although there had been no letters granted and the lapse of time barred suit by an administrator, Trafford *v.* Wilkinson, 3 Tenn. Ch. 449; nor even by the sole legatee (in the absence of proof that there are no debts). Wood *v.* Cosby, 76 Ala. 557. So, the legatee of a deceased partner cannot sue the surviving partner for an accounting, unless the executor refuses to bring such action, or his position is so inconsistent that injury may result from his suing as personal representative. Blake *v.* Barnes, 18 N. Y. Supp. 471. In New York, however, the statute allows the widow, although not one of the next of kin, to sue for a legacy or distributive share due to the deceased. Betsinger *v.* Chapman, 24 Hun 15; 2 R. S. 114, §§ 9, 10.

Heirs or next of kin cannot bring suit when there is a pending administration, Tappan *v.* Tappan, 30 N. H. 50; or before the time for taking out letters of administration has expired. Baird *v.* Brooks, 65 Ia. 40; Caleb *v.* Hearn, 72 Me. 231. But in some states, where the estate owes no debts and there is no administration, the next of kin are allowed to sue in their own right for the collection of debts due to the deceased, Williams *v.* Riley, 88 Ind. 220; Salter *v.* Salter, 98 Ind. 522; Holzman *v.* Hibben, 100 Ind. 339; in the absence of objection. Smith *v.* Gooch, 6 Lea 536. In such suit it should appear that there is no pending administration, Finnegan *v.* Finnegan, 125 Ind. 262; and also that there are no debts, and that the decedent left no widow, or that the widow has relinquished all interest. State *v.* Sanders, 90 Ind. 421. An heir simply as such cannot even sue an executor *de son tort* of the decedent's estate. Ferguson *v.* Barnes, 58 Ind. 169. Where there is no administrator for three years, the widow may sue on a judgment which belonged to the community property of herself and her deceased husband. Walker *v.* Abercrombie, 61 Tex. 69. In other states, if the administrator neglects to sue, the next of kin may sue in trover for the conversion of personal property of the deceased, Graves *v.* Pinchback, 47 Ark. 470; or for the recovery of personal property of the estate where the administrator has fraudulently pledged it for his individual profit and the administrator refuses to

sue for its recovery. Randel *v.* Dyett, 38 Hun 347. But where there is a pending administration, they can only sue where suit is necessary for their protection. Lee *v.* Turner, 71 Tex. 264. So, in equity a creditor may apply to have a conveyance by the decedent set aside for fraud, Wall *v.* Fairley, 73 N. C. 464; especially where the administrator refuses to take the necessary steps. Vandyke *v.* Vandyke, 4 Stew. (N. J.) 176.

Action relating to land. By statute the personal representative may maintain an action of ejectment in some states for the necessities of the administration, Dundas *v.* Carson, 27 Neb. 634; Sanchez *v.* Hart, 17 Fla. 507; Cothran *v.* McCoy, 33 Ala. 65; McCullough *v.* Wise, 57 Ala. 623; Culberhouse *v.* Shirey, 42 Ark. 25; Chowning *v.* Stanfield, 49 Ark. 87; Morgan *v.* Casey, 73 Ala. 222; so, by statute, in Georgia (1882 Code, §§ 2246, 2486), for debts or distribution. And judgment against the administrator in such suit will bind the heir. Spotts *v.* Hanley, 85 Cal. 155; McLeran *v.* Benton, 73 Cal. 329. He may sue in ejectment, without an order of the court, Miller *v.* Hoberg, 22 Minn. 249; although it has been held that he should have a preliminary order of sale before commencing an action of ejectment. Tenny *v.* Poor, 14 Gray 500; Head *v.* Driver, 79 Ga. 179. The administrator may sue in ejectment, in Louisiana, where the heirs have not accepted the succession, Woodward *v.* Thomas, 38 La. An. 238; and need not join the "universal legatee" as plaintiff. Smith *v.* Sinnott, 44 La. An. 51.

So, the personal representative may bring an action of ejectment for land conveyed by his decedent in fraud of creditors, so far as it may be required for the payment of debts, Pease *v.* Shirlock, 68 Vt. 622; and bringing such suit after eighteen months raises the presumption that the personal property is insufficient for the debts, Banks *v.* Speers, 97 Ala. 560; but he cannot sue in ejectment for payment of debts barred by the Statute of Limitations. Lee *v.* Downey, 68 Ala. 98.

In some states the personal representative is the only one who can sue in ejectment while the administration is still pending. Meeks *v.* Vassault (Cal.), 3 Sawy. 206. In the meantime ejectment can be brought neither by the heirs, Doyle *v.* Wade, 23 Fla. 90; Harper *v.* Strutz, 53 Cal. 655; Lamar *v.* Sheffield, 66 Ga. 710; Georgia (Code, § 2246); nor by the devisees. McCrea *v.* Haraszthy, 51 Cal. 146; Meeks *v.* Kirby, 47 Cal. 168. And if the administrator neglects to sue until his right is barred, the heir will be barred also and must look to the administration bond for his redress. Meeks *v.* Vassault (Cal.), 3 Sawy. 206; McLeran *v.* Benton, 73 Cal. 329. The administrator may even recover possession against the heir or devisee until after distribution of the estate. Page *v.* Tucker, 54 Cal. 121. In Georgia, the heirs may sue in ejectment with the consent of the administrator or in default of an administrator, Mason *v.* Atlanta Fire Co., 70 Ga. 604; or may sue in his stead where he is in collusion with an adverse holder of the land. Edwards *v.* Kilpatrick, 70 Ga. 328.

The administrator may sue in some states for an injury to the decedent's real property by the discontinuance of a right of way after his death, Webster *v.* Lowell, 139 Mass. 172; or for a trespass to the land, Leatherwood *v.* Sullivan, 81 Ala. 458; to the exclusion of the heirs, until the estate is settled. Northcraft *v.* Oliver, 74 Tex. 162.

But an executor cannot sue in ejectment under a testamentary power of sale. Fredericks *v.* Cisco, 72 Md. 393; Rogers *v.* Marker, 12 Heisk. 645. And

the administrator's statutory right of possession is not subject to sale as a chattel, and his successor may maintain ejectment against a purchaser from the administrator in chief. Kline *v.* Moulton, 11 Mich. 370. An executor cannot sue in trespass without prior possession. Noon *v.* Finnegan, 29 Minn. 418. And a devisee in possession of the land may sue for a trespass while the administration is still pending, and if he is also executor, the individual recovery will bar further recovery as executor. Colton *v.* Onderdonk, 69 Cal. 155.

In the absence of statutory provision to that effect he is not a proper party to an ejectment suit, Humphreys *v.* Taylor, 5 Or. 260; or in partition, Speer *v.* Speer, 1 McCart. 240; Whitlock *v.* Willard, 18 Fla. 156; even for the purpose of obtaining a sale for the payment of debts, Clayton *v.* Blough, 93 Ind. 85; or to quiet title (without an order of the court directing such suit), Keeler *v.* Trueman, 15 Col. 143; or in any suit involving the title to lands of the deceased, Zacharie *v.* Waldron, 56 Tex. 116; or to recover for a specific devisee lands held adversely. Peer *v.* Cookeron, 1 McCart. 361. The title is not in the administrator, and he cannot maintain a suit as to the title, Chowning *v.* Stanfield, 49 Ark. 87; Sisk *v.* Almon, 34 Ark. 391; Theurer *v.* Brogan, 41 Ark. 88. To such suit he is neither a necessary, Senat *v.* Findley, 51 Ia. 20; nor a proper party. Wood *v.* Bryant, 68 Miss. 198. He cannot sue for the rents (although authorized by the heirs to collect them). Stewart *v.* Smiley, 46 Ark. 373. He cannot recover for use and occupation from a purchaser entering in the lifetime of the deceased. Brewer *v.* Conover, 8 Harr. (N. J.) 214. But where the deceased has assigned a lease in fraud of creditors, the administrator may recover from the fraudulent assignee rents collected by him on the lease. Doe *v.* Clark, 42 Ia. 123.

Parties—Co-executors. In an action at law all co-executors must join as plaintiffs. Hill *v.* Smalley, 1 Dutch. 374; Bodle *v.* Hulse, 5 Wend. 313; Dickerson *v.* Robinson, 1 Halst. 195; Hunt *v.* Kearney, Pen. (N. J.) 721; see, however, *contra,* Alston *v.* Alston, 3 Ired. 447. And the non-joinder of other co-executors as plaintiffs must be pleaded in abatement. Packer *v.* Wilson, 15 Wend. 343. So, all executors should join in an application to have the estate declared insolvent. Hutchinson *v.* Newbold, 18 Stew. (N. J.) 698. The rule of the common law is that all co-executors must join as plaintiffs whether they have qualified or not, Hill *v.* Smalley, 1 Dutch. 370; Bodle *v.* Hulse. 5 Wend. 313; (before the present New York statute); but under the New York statute it is unnecessary to join those who have not qualified. Moore *v.* Willett, 2 Hilt. 522; Code C. P. § 449 (act of 1838); and in Alabama, it seems that it is a misjoinder to include them. Cleveland *v.* Chandler, 3 Stew. (Ala.) 489. So, one of several executors or administrators may sue in his own name and alone to collect a note made to the decedent and payable to bearer, Packer *v.* Wilson, 15 Wend. 343; and should sue alone to collect a loan made by himself, Thornton *v.* Smiley, 1 Ill. 34; or to recover the purchase money of land sold by him before the qualification of his co-executor. Heron *v.* Hoffner, 3 Rawle 393. And where one administrator has instructed a debtor of the estate not to pay his co-executor, he is properly made a party defendant in an action by the administrator for the debt, Strever *v.* Feltman, 1 Thomp. & C. 277; and where a co-administrator refuses to be joined as plaintiff, he may be joined as a defendant (by statute). Rizer *v.* Gillpatrick, 16 Kan. 564.

One administrator cannot sue his co-administrator at law for the balance due the estate, but if a judgment has been rendered without objection, and left undisturbed for many years, it will be evidence of the amount due. Finch *v.* Ragland, 2 Dev. Eq. 137. But one executor may sue his co-executor for money of the estate loaned to him, for which he gave a note to him as executor, reciting that the note was given for a loan to the maker individually, Alston *v.* Jackson, 4 Ired. 49; or for money due him individually from the estate, where all of the assets had been received by the defendant alone as acting executor. Pringle *v.* Pringle, 130 Pa. St. 565. An executor cannot be both plaintiff and defendant (although in different capacities as a representative and individually), Newbold *v.* Fennimore, 24 Vroom 307; Norres *v.* Hays, 44 La. An. 907; Byrne *v.* Byrne, 94 Cal. 576; but two executors may join in suing the indorser on a note made by one of them, and afterward purchased by them from an indorsee with funds of the estate, Faulkner *v.* Faulkner, 73 Mo. 327; and the assignee of an executor's claim against the estate may sue him and his co-executor. Snyder *v.* Snyder, 96 N. Y. 88.

Action by administrator de bonis non. In general, the administrator *de bonis non*, and not the personal representative, of a deceased executor or administrator is the proper party to bring suit against debtors of the original decedent, Rogers *v.* Gooch, 87 N. C. 442; Grant *v.* Bell, Id. 34; or to recover property of the estate fraudulently disposed of by his predecessor. Williams *v.* Verne, 68 Tex. 414. This has been held to be so even where the indebtedness is represented by a note made to the former executor *eo nomine*. Ballinger *v.* Cureton, 104 N. C. 474. But to the effect that the official designation is merely words of description, and that the action on such note should be brought by the executor's personal representative, see Saffold *v.* Banks, 69 Ga. 289.

The administrator *de bonis non* may, by statute, in many of the United States proceed against his predecessor for any default on his part, see Vol. II. p. 160, n.; as also against his administration bond, see Vol. I. p. 649, n. And where the surety on an administrator's bond becomes the administrator *de bonis non* upon the administrator's removal, he may sue his predecessor for a breach of the bond, after indorsing on the bond the amount of the default as paid by himself, and charging himself with it in his inventory. Hazleton *v.* Valentine, 113 Mass. 472.

Action in representative capacity. An executor or administrator may sue in his representative capacity or as an individual on a note belonging to the estate payable to bearer, Packer *v.* Wilson, 15 Wend. 343; on a note made to himself "as administrator," James *v.* Johnson, 44 Ala. 629; Gale *v.* Ennis, 1 Tex. 184; Litchfield *v.* Flint, 104 N. Y. 543; on an arbitration bond made to him "as administrator," Stewart *v.* Richey, 2 Harr. (N. J.) 164; against the maker of a note, indorsed by the decedent, and taken up by him for the estate, Mowry *v.* Adams, 14 Mass. 327; on a contract made with himself in his representative capacity, Thompson *v.* Whitmarsh, 100 N. Y. 35; Harbin *v.* Levi, 6 Ala. 389; James *v.* Johnson, 44 Ala. 629; Sasscer *v.* Walker, 5 Gill & J. 102; Laycock *v.* Oleson, 60 Ill. 30; in trover for conversion of personal property of the estate taken between the time of his death and the issuing of letters, Ham *v.* Henderson, 50 Cal. 367; or in replevin for such property, Gilkey *v.* Hamilton, 22 Mich. 283; in trespass for injury to the property of the decedent between the time of his death and the granting of letters, Knox *v.* Bigelow, 15 Wis. 415; and after his

death his personal representative may sue on a contract made by him as executor or administrator. Collins *v.* Greene, 67 Ala. 211. He may recover in his own name on a foreign judgment recovered by him as administrator in that place. Tittman *v.* Thornton, 107 Mo. 500. And he may recover "as executor" of B. on a note given to him *eo nomine*, although it represented the settlement of a debt due to A. and B. made with B.'s executor after the death of both A. and B. Catlin *v.* Underhill, 4 McLean 337. But where the record showed only an individual demand, the court refused to render an adverse judgment against the plaintiff in his representative capacity. Usry *v.* Suit, 91 N. C. 406.

In New York, executors and administrators are required by statute to sue in their representative capacity on causes of action accrued in decedent's lifetime, Code C. P. § 1814; Buckland *v.* Gallup, 105 N. Y. 453; Bingham *v.* Marine Bank, 17 Abb. N. C. 431. It is not, however, essential that the suit should be brought in words "as executor" if the complaint shows the action to be such in fact. Beers *v.* Shannon, 12 Hun 161; S. C. 73 N. Y. 292. And he may recover in his own right in an action brought in form "as administrator." Bingham *v.* Marine Bank, 18 Abb. N. C. 135; Litchfield *v.* Flint, 104 N. Y. 543; Newhall *v.* Turney, 14 Ill. 338; Braydon *v.* Harmon, 69 Me. 29.

After all the debts have been paid, and final settlement made, leaving one note not collectible by reason of the insolvency of the maker, the administratrix (being also a distributee) may sue on such note, and if objection is not made as to non-joinder of the other distributees, the defect is waived. Humphreys *v.* Keith, 11 Kans. 108. And a suit by one as administratrix, alleging full administration, and that she is sole distributee, is really a suit in her own right. White *v.* Pulley, 27 Fed. Rep. 436.

After his removal from office he cannot bring an action for the recovery of property of the estate, Afflerbach *v.* McGovern, 79 Cal. 268; nor on a contract made by him for the estate, Harbin *v.* Levi, 6 Ala. 399; unless charged with it in his settlement, Collins *v.* Greene, 67 Ala. 211; but he may collect a judgment previously rendered on a contract made with him. Hambrick *v.* Crawford, 55 Ga. 335. And cancellation of an administrator's bond by the Court of Probate does not revoke his appointment nor disqualify him from bringing suit. Clarke *v.* Rice, 15 R. I. 132.

He cannot join counts for money due to him as administrator and individually. Matherson *v.* Grant, 2 How. 263; nor an action for trust funds with a demand for moneys due to himself personally. Mertens *v.* Loewenberg, 69 Mo. 208; but he may join demands due to himself individually and as executor on contracts made with himself and accounted for by him. Haskell *v.* Brown, 44 Vt. 579.

In suit upon an obligation made to the decedent, the administrator should aver his appointment and make profert of his letters, Fugate *v.* Bronaugh, 3 Cranch C. C. 65; and should set forth the facts giving jurisdiction to the appointing court. Secor *v.* Pendleton, 47 Hun 281. In some states, however, profert is unnecessary, and the want of legal authority must be pleaded. Hansford *v.* Van Auken, 79 Ind. 302; Dolson *v.* De Ganahl, 70 Tex. 620. And the plaintiff is not required to prove his appointment by a plea of *non assumpsit*, Wise *v.* Getty, 3 Cranch C. C. 292; McKimm *v.* Riddle, 2 Dall. 100; or not guilty. Dignowitty *v.* Coleman, 77 Tex. 98; Clark *v.* Clark, 51 Ala. 498. The regularity of the administra-

tor's appointment cannot be questioned collaterally in a suit to recover assets. Moore *v.* Finch, 65 Hun 404; Abbott *v.* Curran, 98 N. Y. 665. See too, Vol. I. p. 675, *ubi supra.*

Foreign executor or administrator. At common law a foreign executor or administrator has no standing in court and cannot bring suit as such. Palmer *v.* Phœnix Insurance Co., 84 N. Y. 67; Trecothick *v.* Austin, 4 Mason 26; Dial *v.* Tappan, 20 S. C. 167. But this rule is now changed in many of the United States by statute, see Vol. I. p. 429, n., *ubi supra.* He may, however, recover in his individual name on a judgment recovered by him as executor in the foreign jurisdiction, Lewis *v.* Adams, 70 Cal. 403; or in the United States courts in another state. Biddle *v.* Wilkins, 1 Pet. 686. And a foreign executor may sue on a note indorsed in blank to his testator before his death, Giddings *v.* Green, 4 Hughes C. C. 446; but in South Carolina, he cannot even bring an action on a note payable to bearer made to his intestate. Kirkpatrick *v.* Taylor, 10 Rich. 393. Action may be brought, in general, by the assignee of a foreign administrator, Harper *v.* Butler, 2 Pet. 239; Peterson *v.* Chemical Bank, 32 N. Y. 21; Mackay *v.* Church, 15 R. I. 121; Campbell *v.* Brown, 64 Ia. 425; Leake *v.* Gilchrist, 2 Dev. 73; but not in South Carolina. Dial *v.* Gary, 24 S. C. 572. And a foreign executor who holds a bond and mortgage by parol assignment and delivery from the legatees of the decedent may bring his suit upon it in his own right. Smith *v.* Webb. 1 Barb. 230. And when a foreign executor brings an action, he is subject to a defense of set-off which would be available against letters taken out in that forum, although it might not be available in his domiciliary forum for want of due presentment. Russell *v.* Hubbard, 76 Ga. 618.

On the other hand, the administrator of the domicil can bring suit against a foreign debtor found within the jurisdiction, Fox *v.* Carr, 16 Hun 434; but such action begun against a foreign insurance company in the jurisdiction of testator's domicil by service on its agent there will be superseded in the forum of the company's domicil by a suit afterward brought there by an ancillary administrator for the benefit of local creditors. Merrill *v.* New England Insurance Co., 103 Mass. 245.

Set-off. Actions by a personal representative are subject, like other actions, to all legal set-offs. The defendant may set off a claim which was not due at the time of the decedent's death, Bigelow *v.* Folger, 2 Met. 255; Skiles *v.* Houston, 110 Pa. St. 254; or was unliquidated at that time, Phelps *v.* Rice, 10 Met. 128; or was neither liquidated nor due. Rawson *v.* Copland, 3 Barb. Ch. 166. In an action for professional services of the deceased the defendant may set off damages resulting from the decedent's negligence. Phelps *v.* Rice, 10 Met. 128. He may set off usury paid to the executor upon the claim sued upon, Ewing *v.* Griswold, 43 Vt. 400; or a debt of the decedent's firm. Blair *v.* Wood, 108 Pa. St. 278.

He may set off a claim which has not yet been presented formally against the estate, Smalley *v.* Trammel, 11 Tex. 10; Mitchell *v.* Rucker, 22 Tex. 66; and must do so in an action begun before the defendant's claim has been presented. Martin *v.* Hammond, 58 Vt. 398; Sabin *v.* Kelton, 54 Vt. 283; 1880 R. L. §§ 2117, 2122, 2131. And an executor may have credit in his account for a just set-off allowed by the pledgee of a life insurance policy belonging to the estate, although the claim of the insurance company had not been presented for allowance against the estate. Estate of Galland, 92 Cal. 293; Code C. P. § 1632. The statute, in Wisconsin, makes

the pleading of such a set-off effectual as a formal presentment (1889 An. Stats. § 3847); but does not render a claim available as a set-off which has been already barred for non-presentment. Carpenter *v.* Murphy, 57 Wis. 541. As to set-off of claims which have been barred by non-presentment, see Vol. II. p. 235, n. After the claim has been presented and allowed the allowance is conclusive as to the amount of the claim as a set-off. Jessup *v.* Spears, 38 Ark. 457.

If the debt is barred by the Statute of Limitations, it cannot be set off in an action by a legatee, Estate of Light, 136 Pa. St. 211; or distributee, Richardson *v.* Keel, 9 Lea 74; although collusively renewed by the debtor (the husband of the distributee). Rawlins *v.* Rawlins, 75 Ga. 682.

Claims against an insolvent decedent are available as a set-off against his estate, Jarvis *v.* Rogers, 15 Mass. 407; Morrison *v.* Jewell, 34 Me. 146; Ellis *v.* Smith, 38 Me. 114; Bigelow *v.* Folger, 2 Met. 255; Phelps *v.* Rice, 10 Met. 128; Palmer *v.* Steiner, 68 Ala. 400; Richardson *v.* Parker, 2 Swan 529; Skiles *v.* Houston, 110 Pa. St. 254; Light *v.* Leiniger, 8 Pa. St. 403; Ford *v.* Thornton, 3 Leigh 695; although it would not have been available against the decedent in his lifetime. Ellis *v.* Smith, 38 Me. 114; but not against a debt for property purchased of the administrator, Eldridge *v.* Bell, 64 Ia. 125. And claims acquired after insolvency cannot be set off, Union National Bank *v.* Hicks, 57 Wis. 189.

And where the set-off exceeds the claim of the administrator, he may protect the estate from an absolute judgment by proof of outstanding preferred debts of sufficient amount to exhaust the assets in hand. Ray *v.* Dennis, 5 Ga. 357. Where separate judgments are recovered for the administrator's claim and the counter claim, execution may be had on the former with a stay of execution on the latter until the condition of the estate is ascertained. Rountree *v.* Britt, 94 N. C. 104.

It is a general rule, however, that nothing is available as a set-off which could not be the subject matter of an independent recovery by the defendant. Cutler *v.* Middlesex Manufacturing Co., 14 Pick. 483. Thus, in an action for money due to the intestate the defendant cannot set off his prospective share as one of the distributees, Guthrie *v.* Guthrie, 17 Tex. 541; although this has been permitted after an account filed by the administrator settling the amount of such distributive share in his hands. Smith *v.* Boyer, 2 Watts 173.

A defendant cannot set up a debt of the deceased against an action brought by an executor or administrator in his own right, Thompson *v.* Whitmarsh, 100 N. Y. 35; Stephens *v.* Cotterell, 99 Pa. St. 188; Newhall *v.* Turney, 14 Ill. 338; Merritt *v.* Seaman, 61 N. Y. 168; S. C. 6 Barb. 330; or against an action brought upon a contract made with the executor for the estate, Fry *v.* Evans, 8 Wend. 530; *e. g.*, for property purchased from the executor, Eldredge *v.* Bell, 64 Ia. 125; Bizzell *v.* Stone, 12 Ark. 278; Wolfenberger *v.* Bucher, 10 Serg. & R. 11; Aiken *v.* Bridgeman, 37 Vt. 249; or for rent accrued after testator's death, Toering *v.* Lamp, 77 Ia. 488; or on a note or bill made to the administrator for property purchased, Harte *v.* Houchin, 50 Ind. 327; Dayhuff *v.* Dayhuff, 27 Ind. 158; Rapier *v.* Holland, Minor (Ala.) 176; but see, *contra*, Rix *v.* Nevins, 26 Vt. 384; or even on a mortgage given to the testator conditioned to pay certain moneys to his executor after his death. Patterson *v.* Patterson, 59 N. Y. 582. But he may set off a debt of the estate against a note belonging to the decedent, although payable to bearer and sued by the administrator

in his own name. Knapp *v.* Lee, 42 Mich. 41. So, where suit is brought by the administrator against a general creditor for surplus proceeds of collateral in his hands after payment of secured claims, the defendant is liable as a trustee, and cannot set off other unsecured claims against the estate. Peters *v.* Bank, 86 Tenn. 224. So, where the money sued for was the proceeds of sales made by the defendant as decedent's commission merchant. Succession of Sparrow, 39 La. An. 696.

And, conversely, a debtor of the estate cannot set up an individual debt of the administrator against his action brought in a representative capacity, Houston *v.* Evans (Tex.), 17 S. W. Rep. 925; Armstrong *v.* Pratt, 2 Wis. 299; *e. g.*, for services in matters of the estate, Stuart *v.* Commonwealth, 8 Watts 74; but he may set off money paid for the funeral expenses of the decedent. Adams *v.* Butts, 16 Pick. 343. An executor cannot even set off the balance due him on final account for advances against his individual indebtedness to the estate. Dolman *v.* Cook, 1 McCart. 56.

He cannot set off a debt of the decedent acquired after his death, Root *v.* Taylor, 20 Johns. 157; Schmidt *v.* Crafts, 2 Brev. 266; although already allowed as a claim of the original creditor against the estate, Harding *v.* Shepard, 107 Ill. 264; nor even a note of the decedent acquired after his death, Irons *v.* Irons, 5 R. I. 264; Mitchell *v.* Rucker, 22 Tex. 66; Cook *v.* Lovell, 11 Ia. 81; Happoldt *v.* Jones, Harper 109; nor a note paid after the decedent's death as his accommodation indorser, Mercier *v.* Smith, 2 Hill 210; for money paid as surety. Minor *v.* Minor, 8 Gratt. 1; White *v.* Henly, 54 Mo. 592. But he may set off a claim for money paid as surety for the decedent after his death on a judgment recovered in his lifetime against both principal and surety, Ray *v.* Dennis, 5 Ga. 357; or on a mortgage which the decedent had assumed to pay. Rawson *v.* Copland, 3 Barb. Ch. 166.

Statute of Limitations. The time within which an action may be brought is generally extended in favor of the personal representative of the deceased creditor. In some states the time of any vacancy in the administration is not reckoned in any term of limitation. *California* (Code C. P. § 1501); *Georgia* (1882 Code § 2928), not exceeding five years. In many states the statute allows the personal representative one year (except where a different period is stated below) after the death of the decedent in which to bring actions which are not already barred at the time of his death. *Alabama* (1886 Code, § 2632); Pickett *v.* Hobdy, 63 Ala. 609; *Arkansas* (1884 Dig. Stats. § 4496); *California* (Code C. P. § 353), six months; *Colorado* (1891 An. Stats. § 2916); *Connecticut* (1888 G. S. § 1388), *Kentucky* (1894 Stats. § 2526); *Maine* (1883 R. S. c. 81, § 88), two years; *Massachusetts* (1882 P. S. c. 197, § 12), two years; *Michigan* (1882 An. Stats. § 8722), two years; *New Hampshire* (1891 P. S. c. 191, § 6), two years after letters; *New York* (Code C. P. § 402); *Oregon* (1892 An. Laws, § 18); *Rhode Island* (1882 P. S. c. 206, § 7); *Wisconsin* (1889 An. Stats. § 4234). So, in North Carolina. Coppersmith *v.* Wilson, 107 N. C. 31. The statutory time has been held to run as against an ancillary administrator, in Maine, from his appointment, and not from that of the principal administrator. Holmes *v.* Tenney, 68 Me. 416. But in an action of detinue brought by the administrator *de bonis non* in his own name it is no reply to a plea of the general Statute of Limitations that the principal administrator under whose sale the defendant claims title was removed and the plaintiff appointed less than six months before action

brought. Williams *v.* Moore, 32 Ala. 506. But these statutes (one year, in Wisconsin) do not apply where the creditor dies more than one year before the statute would have run against him. Curran *v.* Witter, 68 Wis. 16. In New York, the time between testator's death and grant of letters in the primary jurisdiction, not exceeding six months, is not computed. Kirby *v.* Lake Shore &c. Railroad, 120 U. S. 130.

The personal representative having a right of action will be barred by the running of the general statute, although the heir of the decedent is under a disability, Rindge *v.* Oliphant, 62 Tex. 682; so, by the running of the statute against his co-executor. Turner *v.* Debell, 2 A. K. Marsh. 383. But an executor's suit for the refunding of a legacy will not be barred by the running of the statute against the creditors of the estate. Coddington *v.* Bispham, 9 Stew. (N. J.) 574, affg. Id. 224; and see Haggerty *v.* Mann, 56 Md. 522. A foreign administrator cannot sue on a later appointment as a local representative, after being barred of a suit in his own name. Campbell *v.* Wilson, 2 Mackey 497. And where letters have been granted only in the decedent's domicil, the statute will run against claims of the estate in another forum where no letters have been granted. Manly *v.* Turnipseed, 37 Ala. 522.

Where the cause of action arose after the decedent's death, the statute will not begin to run until letters are granted, Bucklin *v.* Ford, 5 Barb. 393; Wood *v.* West, 38 Ark. 243; and will not run against a testamentary trust from the time of letters granted to an administrator *cum testamento annexo* (on the renunciation of the testamentary executor and trustee), but only from the appointment and qualification of the new trustee. Dunning *v.* Ocean National Bank, 61 N. Y. 497, affg. 6 Lans. 296.

Joinder of actions. Counts in assumpsit stating promises to the plaintiff as administrator may be joined in the same declaration with counts stating promises to the intestate in his lifetime. Stevens *v.* Gregg, 10 Serg. & R. 234; Brown *v.* Lewis, 9 R. I. 497; Fry *v.* Evans, 8 Wend. 530; Haskell *v.* Bowen, 44 Vt. 579; Lowe *v.* Bowman, 5 Blackf. 410; Hapgood *v.* Houghton, 10 Pick. 154. So, on promises to the intestate, the administrator in chief, and the administrator *de bonis non* (the plaintiff). Sullivan *v.* Holker, 15 Mass. 374. So, for work and labor by the executor and for work done by testator, Peries *v.* Aycinena, 3 Watts & S. 64; or for rent accruing before and after testator's death. Greenleaf *v.* Allen, 127 Mass. 248. So, the complaint may state the contract with the deceased and the grant of letters without concluding in damages to the plaintiff as administrator, Wolscheid *v.* Thome, 76 Mich. 265; but it should allege a promise to the administrator as such. This may, however, be added by amendment. Clark *v.* Lamb, 6 Pick. 512; Flower *v.* Garr, 20 Wend. 668. Counts may be joined for conversion in the lifetime of the intestate and after his death, French *v.* Merrill, 6 N. H. 465; Lashlee *v.* Wiley, 8 Humph. 659; averring title in the estate or the administrator. Ham *v.* Henderson, 50 Cal. 367.

The plaintiff cannot, however, join independent causes of action in his own right and in his representative capacity. Mason *v.* Norcross, Coxe 252. He may sue in his own right on a judgment recovered by him as such. Talmage *v.* Chapel, 16 Mass. 71; Adams *v.* Campbell, 8 Vt. 477. So, he may aver an indorsement to himself as administrator, and claim title as such. Elliott *v.* Pollitzer, 24 S. C. 81. But to

recover on a promise made to the decedent there should be an averment to that effect. Merritt *v.* Keeler, 75 Mich. 314.

If he is entitled to sue in his individual right, the description of his representative character will be regarded as surplusage, Kenan *v.* Du Bignon, 46 Ga. 258; although he is described as administrator in the writ, and as executor in the declaration. Chapman *v.* Davis, 4 Gill 166. So, the declaration may be amended to show in what capacity the plaintiff sues. Wolscheid *v.* Thome, 76 Mich. 265. If the allegation sufficiently shows this, the use or omission of the word "as" is unimportant, Littlefield *v.* Flint, 104 N. Y. 543; Beers *v.* Shannon, 73 N. Y. 292; Burling *v.* Thompkins, 77 Cal. 257; Bulkley *v.* Andrews, 39 Conn. 523; Spurgeon *v.* Robinet, 4 Bibb. 75; Daniels *v.* Ritchie, 7 Blackf. 391; Williams *v.* Moore, 32 Ala. 506. So, he may describe himself as administrator and as administrator *de bonis non* in the same complaint. Ikelheimer *v.* Chapman, 32 Ala. 676. As to what is a sufficient averment of the plaintiff's representative character, in California, see Judah *v.* Fredericks, 57 Cal. 389; McCutcheon *v.* Weston, 65 Cal. 371.

Plea of ne unques executor. This plea may be pleaded in bar of an action by the executor for a cause of action accruing in testator's lifetime, Coddington *v.* Whitaker, 5 Blackf. 470; but not in an action upon a contract made with the plaintiff as administrator whether sued in his representative capacity or otherwise, Riddle *v.* Hill, 51 Ala. 224; even where the instrument is declared on as payable to him "as administrator." Bailey *v.* Galton, 14 Ark. 180. And under such plea the defendant cannot show the cessation of the plaintiff's authority since suit begun. Wilson *v.* Bothwell, 50 Ala. 378.

At common law this plea is necessary to put the plaintiff to the proof of his representative capacity. Merritt *v.* Cotton States Life Insurance Co., 55 Ga. 103. And a plea of the general issue is not sufficient for that purpose, Brokaw *v.* Decker, Pen. (N. J.) 231; Gulick *v.* Van Arsdale, Id. 746; Denver &c. Railway Co. *v.* Woodward, 4 Col. 1; Brown *v.* Nourse, 55 Me. 230; Pollard *v.* Buttery, 3 Blackf. 239; Cheatham *v.* Riddle, 12 Tex. 112; or to raise the question of the insufficient form of the letters (for want of stamp), Miller *v.* Henderson, 24 Ark. 344; or of the insufficiency of foreign letters duly averred by the plaintiff. Collins *v.* Ayres, 13 Ill. 358. The plaintiff should aver an authority in the domestic jurisdiction, but the want of such averment is not demurrable. Secor *v.* Pendleton, 47 Hun 281. And a general demurrer will not raise the question of the plaintiff's right to sue, Gibson *v.* Ponder, 40 Ark. 195; nor will a special plea averring that the letters were procured by fraud. McFeely *v.* Scott, 128 Mass. 16. Formal profert is still necessary in some states, Ligon *v.* Bishop, 43 Miss. 527; but not in others. Chamberlain *v.* Tiner, 31 Minn. 371; Ellis *v.* Appleby, 4 R. I. 462; Walt *v.* Walsh, 10 Heisk. 314. On the other hand, the formal profert in the declaration will not require proof of authority at the trial, unless it is made necessary by the subsequent pleadings. Davis *v.* Taylor, 4 Jones 499; Hyman *v.* Gray, 4 Jones 155.

Evidence. The rules as to admissibility of evidence in actions for and against the representatives of deceased persons, and as to the competency of the adverse party as a witness, and the effect of admissions by personal representatives and their predecessors, will be considered with the latter in the note on p. *1875, *ubi infra.*

*CHAPTER THE SECOND.

OF REMEDIES FOR EXECUTORS AND ADMINISTRATORS IN EQUITY.†

The executor or administrator is entitled to all equitable rights and interests of the deceased and can enforce them in the same way as the deceased.

General equitable rights of executor, &c.

The one exception to this rule, which is founded on the maxim *actio personalis moritur cum persona* (*a*), has but little application in equity: for instance, it does not prevent the executor of a person wronged from obtaining an equitable remedy by a mandatory injunction, in order to prevent the continuance of some injury to the property of a deceased person. An executor can sustain an action to have an obstruction to light removed if it affects land of his testator, although his right to damages for the injury to the real estate of the deceased may be barred, because the action was not brought within the limit of time provided by 3 & 4 Will. IV. c. 42, s. 2 (*b*), and where injury to the dead man's estate is shown the remedy is not confined to injunction, but extends to damages also (*c*).

Exception.

A great many of the equitable rights and interests of the deceased the executor or administrator can enforce in the Chancery Division by precisely the same form of action as the deceased would employ if he was living.

Many rights the executor enforces in the same way as the deceased would have done.

For instance, an action in equity can be successfully maintained to protect the literary property of the deceased, as in Thompson *v.* Stanhope (*d*), where the executors of Lord *Chesterfield obtained an injunction against Mrs. Stanhope, restraining her from publishing the letters which had been received by her husband, the natural son of Lord Chesterfield; or Queensberry *v.* Shebbeare (*e*),

† See American note at end of this chapter.

(*a*) This maxim will be found fully treated of, *ante*, p.*697.

(*b*) Phillips *v.* Homfray, 24 Ch. D. 439. Jones *v.* Simes, 43 Ch. D. 607.

(*c*) For recent instances of protecting trade-marks, see Hatchard *v.* Mège, 18 Q. B. D. 771. Oakley *v.* Dalton, 35 Ch. D. 700.

(*d*) Ambl. 734. See also Granard *v.* Dunkin, 1 Ball & B. 207.

(*e*) 2 Eden, 329.

where the representatives of Lord Clarendon obtained an injunction to restrain the printing of an unpublished copy of his "History of the Rebellion," which had been given by a former representative of the author to a person under whom the defendant claimed, but not with an intention that he should publish it.

Scope of this chapter.

It is not proposed in this chapter to discuss such remedies as are before mentioned; they are common to all litigants in the Chancery Division, and they do not become exceptional merely because they are adopted by executors or administrators.

In this chapter and in the chapter on remedies against an executor in equity it is only proposed to discuss those remedies by or against the executor or administrator which are peculiar and exceptional.

Retainer and set-off not exceptional remedies.

In the exceptional remedies by and against executors and administrators in equity hereinafter mentioned, questions of retainer and set-off by the executor or administrator frequently arise, but retainer and set-off are legal rather than equitable remedies, and are fully dealt with in another part of this work (*f*).

Right of executor, &c., to pay statute-barred debt.

An executor or administrator, can before an administration order, pay or retain a statute-barred debt (*g*), or may admit it so as to take it out of the statute (*h*), but he cannot revive it after decree (*i*).

Statute of Limitations.

The Statute of Limitations may be set up in resistance to an application to continue the proceedings, if the executor or administrator does not proceed within six years after the abatement of an action, provided there has been no judg*ment (*k*); for the Statute of Limitations cannot be applied to a judgment (*l*). If an executor or administrator, trustee for an infant, neglects to sue within six years, the Statute of Limitations binds the infant (*m*).

In the case of an administrator time runs from the death, not from grant of letters of administration.

An administrator claiming the estate or interest in lands of the deceased person of whose chattels he has been appointed administrator, is to be deemed to claim as if there had been no interval of time between the death f the deceased person and the grant of the letters of

(*f*) *Ante*, p.*884 and p.*1780.

(*g*) Stahlschmidt *v.* Lett, 1 Sm. & G. 415. Hill *v.* Walker, 4 K. & J. 166.

(*h*) Moodie *v.* Bannister, 4 Drew. 432. Blair *v.* Nugent, 3 J. & Lat. 673.

(*i*) Phillips *v.* Phillips, 32 Beav. 26.

(*k*) Hollingshead's case, 1 P. Wms. 742. Mitf. Pl. 272, 273, 4th edit.

(*l*) *Supra*, note (*k*).

(*m*) Wych *v.* East India Company, 3 P. Wms. 309.

administration (*n*). The effect of this is, that time for the purpose of the Statute of Limitations commences to run, as against an administrator claiming a chattel interest in land, from the date of the death of the intestate and not from the date of the grant of administration (*o*).

Restraining proceedings in foreign courts by injunction.

The Chancery Division has power to restrain proceedings in a foreign court against an executor or administrator by persons within the jurisdiction (*p*) by the exercise of jurisdiction *in personam* against such persons.† It will do so where proceedings are improperly or vexatiously instituted or prosecuted in the foreign court to determine questions which ought to be adjudicated upon in this country (*q*).

This jurisdiction can be exercised whether an administration order has or has not been made (*r*).

Proceedings in a foreign court will not be restrained on the ground of mere hardship or inconvenience (*s*).

*The staying of actions against an executor or administrator, after an administration order has been made, will be found dealt with in a subsequent chapter (*t*).

Where the executor, in an action at law against him by a creditor of the deceased, had pleaded according to the truth of the case, he was always held entitled, when the assets were taken from him and administered by the Court of Equity, to all the protection which that court could give him against any personal liability in respect of the judgment at law (*u*).

But with respect to restraining a creditor from proceeding, after a decree for administration, upon a verdict or judgment recovered by him against an executor or administrator, the following distinction

(*n*) 3 & 4 Will. IV. c. 27, s. 6.

(*o*) Re Williams, 34 Ch. D. 558. Re Bonsor & Smith's Contract, 34 Ch. D. 560.

(*p*) The court has no such jurisdiction if the persons sought to be restrained are not within the jurisdiction: Re Boyse, 15 Ch. D. 591.

† See American note at end of this chapter.

(*q*) Carron Iron Co. *v.* Maclaren, 5 H. L. C. 416. Lord Portarlington *v.* Soulby, 3 M. & K. 104. Venning *v.* Lloyd, 1 D. F. & J. 193. McHenry *v.* Lewis, 22 Ch. D. 397. Hyam *v.* Helm, 24 Ch. D. 531.

(*r*) Bushby *v.* Munday, 5 Madd. 297. Baillie *v.* Baillie, L. R. 5 Eq. 175. Bunbury *v.* Bunbury, 1 Beav. 336. Cord *v.* Cord, 33 Beav. 314.

(*s*) Fletcher *v.* Rodgers, 27 W. R. 96. Although judgment has been given in the foreign court.

(*t*) See *post*, p. *1908.

(*u*) Gaunt *v.* Taylor, 2 Hare, 413.

was taken by Lord Eldon, in Brook *v.* Skinner (*x*): That if the plaintiff at law had recovered judgment *de bonis testatoris*, the court would restrain the creditor from taking execution on such judgment; and that if he had recovered *de bonis propriis*, the court would not restrain the execution. So, in Clarke *v.* Ormonde (*y*), his lordship said, that if a creditor has obtained judgment by which the executor is personally liable, *de bonis propriis*, the court had nothing to do with it; but if a judgment *de bonis testatoris*, it certainly would be a case for an injunction. That is, that the court would interfere to protect the assets, but not to protect the executor against any liability to which he might have personally subjected himself. And, in Drewry *v.* Thacker (*z*), his lordship intimated his opinion, that there was no instance in the history of the Court of Chancery, where, after a judgment at law *de bonis testatoris, et si non, de bonis propriis* of an executor, and execution issued, the proceedings at law had been restrained, on a decree subsequently obtained for administration of the assets. But, in Lord *v.* Wormleighton (*a*), the executor pleaded, to an action by a creditor, *non assumpsit*, a set-off, and *plene adminis**travit*, and the verdict was against him on all these pleas: And, on a decree for the administration of the estate having been pronounced pending the action, Lord Eldon granted an injunction against the creditor, with a direction that the executor should pay the costs at law, including the costs of the trial: And his lordship observed, that the case had been argued as if it was the case of a judgment *de bonis testatoris, et si non, de bonis propriis:* but that, in fact, it was a judgment for the damages *de bonis testatoris*, and for the costs only *de bonis propriis*.

In the modern case of Etheridge *v.* Wormsley (*b*), a creditor had previously to any administration decree, obtained judgment in a county court against the defendant, a sole executrix. Pearson, J., refused to restrain the creditor from pursuing his remedy in the county court against the executrix personally, but ordered payment to the creditor by the receiver of the estate, without prejudice to the question whether the executrix should be allowed the payment.

One executor or administrator can in equity bring an action against another (*c*).

(*x*) 5 Meriv. 481, note.

(*y*) Jacob, 124.

(*z*) 3 Swanst. 542, 543, 547, 548. See also Terrewest *v.* Featherby, 2 Mer. 480.

(*a*) Jacob, 148.

[*1803]

(*b*) 29 Ch. D. 557.

(*c*) Allen *v.* Story, Toth. 150. Peake *v.* Ledger, 8 Hare, 313. See the American case of Beall *v.* Hilliary, 1 Maryland, 186. 54 American Decisions, 649.

An executor or administrator (*d*) can in equity as at law sue before grant to him of probate, or letters of administration, but he must obtain a grant of probate or letters of administration before the hearing (*e*). It appears to be unnecessary for an executor to allege in his pleading that a valid grant of probate has been made to him (*f*).

Right of executor or administrator to sue before probate or letters of administration.

In an old case (*g*), it was held that production by a plaintiff, suing as administrator to A., of the letters of administration, was not *prima facie* evidence of A.'s death (*h*), but at the *hearing, liberty was given to the plaintiff to exhibit interrogatories to prove the death, and the cause permitted to stand over for that purpose (*i*).

Evidence of death of testator.

An action commenced by the dead man can be continued by his executor or administrator, if the interest survives, on obtaining an order for that purpose (*k*).

Right of executor or administrator to continue an action.

An action commenced by co-executors does not abate by the death of one of them, as the whole of his interest survives to the others, nor is any order to continue the proceedings necessary (*l*).

Effect of death of one of several plaintiff co-executors.

Where there are several executors, they must all sue, though one of them is an infant (*m*). If only one of several executors has proved, he may sue alone without making the other executors parties, although they may not have renounced (*n*), unless they have acted (*o*). Where one of two or more executors refuses to join as a plaintiff, the other or others can still bring the action, making the executor who refuses to join a defendant.

Parties to an action by executors.

(*d*) Humphreys *v.* Humphreys, 3 P. Wms. 350.

(*e*) See *ante*, pp.*255,*256.

(*f*) Re Masonic and General Life Assurance Co., 32 Ch. D. 373. The old practice was to allege that probate had been granted or letters of administration taken out: Humphreys *v.* Ingledon, 1 P. Wms. 753.

(*g*) Moons *v.* De Bernales, 1 Russ. Chanc. Cas. 301.

(*h*) See *ante*, p.*477.

(*i*) See Hood *v.* Pimm, 4 Sim. 101. Where money is ordered to be paid to A. or his representatives (the constant course upon payment to creditors) the mere production of the probate is not sufficient to enable the representative to obtain payment: Proof of the death is now required, and that the testator was the party in the cause: Clayton *v.* Gresham, 10 Ves. 289.

(*k*) R. S. C. 1883, Ord. XVII.

(*l*) Toller, 497.

(*m*) 16 Vin. Abr. 251, tit. Parties (B.), pl. 20.

(*n*) Davies *v.* Williams, 1 Sim. 5.

(*o*) Vickers *v.* Bell, 4 De G. J. & S. 274.

Any executor, administrator, or trustee entitled thereto may have a judgment or order against, any one legatee, next of kin, or *cestui que* trust, for the administration of the estate or the execution of the trusts (*p*).

Executor cannot sue or defend *in forma pauperis.*

An executor or administrator is not allowed to sue or defend as a pauper, "because the indulgence intended poor persons not of ability to sue for their rights *in forma pauperis* only extends to persons suing in their own rights, and not as executor or administrator" (*q*).

Writ or originating summons.

*The ordinary method of invoking the aid of the Chancery Division is by writ of summons; in some cases a special mode of procedure by originating summons, motion, or petition applies, but in all cases to which such special procedure does not apply, proceedings can only be commenced by writ. An originating summons is by far the most important form of special procedure. It is only in cases specially defined by statute or the Rules of Court that the court can exercise jurisdiction on an application by originating summons.

Difference between proceedings commenced by writ and originating summons.

The chief difference between proceedings commenced by writ and originating summons is, that the proceedings in the former case are in court, and there are usually pleadings delivered by the parties; in the latter case the proceedings are in chambers, without pleadings.

Costs of proceedings wrongly commenced.

In all cases where proceedings can be commenced by originating summons they can also be commenced by writ of summons; but if proceedings are commenced by writ of summons, which ought to be commenced by originating summons, the extra costs incurred are usually thrown upon the plaintiff (*r*).

If there be any real doubt as to whether proceedings should be

(*p*) Ord. XVI. r. 38. See also Ord. XVI. rr. 8, 9, 32, 40, 46, and Ord. LV. r. 3.

(*q*) Paradice *v.* Sheppard, 1 Dick. 136. Beames on Costs, 78. Oldfield *v.* Cobbett, 1 Phill. Ch. C. 613. Fowler *v.* Davies, 16 Sim. 182. See Bayly *v.* Bayly, 11 Beav. 256.

(*r*) In many cases the costs of proceeding by writ are actually less than the costs of proceeding by summons would have been. As many orders can only be made by the judge personally (see Ord. LV. rr. 15 and 15A), and as most important matters are adjourned to him, both time and expense can often be saved by proceeding by writ, and the judge can, and will, upon application by motion, and with the consent of the parties, at once make the order required.

commenced by originating summons or by writ, the preference should be given to originating summons, as, should the procedure ultimately turn out to be wrong, the court will usually give the executor or administrator issuing the summons his costs out of the estate, where a mistake has *bona fide* been made. Where an originating summons had, in the first instance, been taken out and dismissed on the ground of want *of jurisdiction, North, J., on a subsequent application by petition to deal with the same fund, allowed the costs of the summons, because it had been issued in the reasonable expectation that the order could be made in chambers, and it was a meritorious application (*s*).

Why a summons is preferable in case of doubt.

The difficulty or importance of the question involved is no reason for refusing to deal with it on originating summons, but in matters of special difficulty, or where questions of large amount are involved, the court usually looks with indulgence on proceedings commenced by writ (*t*).

Matters of special difficulty.

In an administration action the writ and pleadings must be entitled, "In the matter of the estate of A. B., deceased, Between," &c. (*u*). If this be omitted the chief clerk or registrar will require the writ to be amended before drawing up any order in the action (*x*). An originating summons for administration must be entitled in the same way (*y*).

Heading of writ, &c., in an administration action.

Or administration summons.

The court can make an order for general administration of the personal and real estate of a deceased person on originating summons (*z*).

The rules giving special remedies to executors and administrators by originating summons are rules 3 and 4 of Order LV. of the Rules of the Supreme Court, 1883.

Rule 3 of Order LV. is as follows: "The executors or administrators of a deceased person, or any of them, and any person claiming to be interested in the relief sought as a creditor, devisee, legatee,

(*s*) Re Gellard's Trusts, W. N. 1888, p. 43. The judge usually allows the costs where there is room for doubt as to the jurisdiction on summons, and a mistake has been made *bona fide*.

(*t*) See hereon Bond *v.* Walford, 54 L. T. N. S. 672.

(*u*) Eyre *v.* Cox, 24 W. R. 317.

(*x*) Annual Practice, 1893, p. 208.

(*y*) See Table of Titles, &c., of petitions, &c., issued out of the Central Office, and Form No. 25 R. S. C. 1883, App. L.

(*z*) R. S. C. 1883, Ord. LV. r. 4. An order cannot be made to serve an originating summons out of the jurisdiction: Re Busfield, 32 Ch. D. 123.

[*1806]

next of kin, or heir-at-law or customary heir of a deceased person, or as *cestui que trust* under the trust of any deed or instrument, or as claiming by assign*ment or otherwise under any such creditor or other person as aforesaid, may take out, as of course, an originating summons returnable in the chambers of a judge of the Chancery Division for such relief of the nature or kind following as may by the summons be specified and as the circumstances of the case require (that is to say), the determination, without an administration of the estate or trust, of any of the following questions or matters:—

Questions which can be determined on originating summons.

"(a) Any question affecting the rights or interests of the person claiming to be creditor, devisee, legatee, next of kin, or heir-at-law, or *cestui que trust;*

"(b) The ascertainment of any class of creditors, legatees, devisees, next of kin, or others;

"(c) The furnishing of any particular accounts by the executors or administrators or trustees, and the vouching (when necessary) of such accounts;

"(d) The payment into Court of any money in the hands of the executors or administrators or trustees (*b*);

"(e) Directing the executors or administrators or trustees to do, or abstain from doing, any particular act in their character as such executors or administrators or trustees (*c*);

"(f) The approval of any sale, purchase, compromise, or other transaction (*d*);

"(g) The determination of any question arising in the administration of the estate or trust" (*e*).

*Under rule 4 of Order LV. the court can, on an application by originating summons, order:

(*b*) Trustees can be ordered, under this rule, to pay into court moneys improperly applied by them: Re Chapman, 54 L. T. 13.

(*c*) The act must be something within their trust: Suffolk *v.* Lawrence, 32 W. R. 899.

(*d*) The court cannot order a sale under this rule. It can only approve one as to which the trustees have a discretion: Re Robinson, 31 Ch. D. 247. See on this rule, Re Household, 27 Ch. D. 553, where trustees were authorized to advance to the tenant for life part of the personal estate for the purpose of stocking and cultivating a farm forming part of the settled real estate.

(*e*) Under this rule only those questions can be determined which before the existence of the rule could have been determined under a judgment for the administration of an estate or the execution of a trust: Re William Davies, 38 Ch. D. 211. This subject will be found further treated of in the subsequent chapter dealing with the remedies against executors and administrators in equity.

[*1807] [*1808]

1. The administration of the personal estate of the deceased;
2. The administration of the real estate of the deceased;
3. The administration of the trust.

Administration on originating summons.

"The persons to be served with the originating summons under the preceding rules (*f*) are as follows:—

"A. Where the summons is taken out by an executor or administrator or trustee;

"(a) For the determination of any question, under sub-sections (a) (e) (f) or (g) of rule 3, the persons, or one of the persons, whose rights or interests are sought to be affected;

"(b) For the determination of any question, under sub-section (b) of rule 3, any member, or alleged member of the class;

"(c) For the determination of any question, under sub-section (c) of rule 3, any person interested in taking such accounts;

"(d) For the determination of any question, under sub-section (d) of rule 3, any person interested in such money;

"(e) For relief under sub-section (a) of rule 4, the residuary legatees, or next of kin, or some of them;

"(f) For relief under sub-section (b) of rule 4, the residuary devisees, or heirs, or some of them;

"(g) For relief under sub-section (c) of rule 4, the *cestuis que trust* or some of them;

"(h) If there are more than one executor or administrator or trustee, and they do not all concur in taking out the summons, those who do not concur:

"B. Where the summons is taken out by any person other *than the executors, administrators, or trustees, the said executors, administrators, or trustees" (*g*).

The court which has, under the before-mentioned rule (*h*), power to dispense with service upon more than one member of a class, can, in any case, order any persons beneficially interested in the trust or estate to be made parties,

Court can order any persons it thinks fit to be added as parties.

(*f*) Rules 3 and 4 of Ord. LV.

(*g*) Ord. LV. r. 5. These rules are, for the sake of convenience, set out in this chapter, although they as fitly fall within the subject-matter of the subsequent chapter dealing with the remedies against executors and administrators in equity.

(*h*) Ord. LV. r. 5. See also Ord. XVI. r. 32.

[*1809]

either in addition to, or in lieu of, the previously existing parties (*i*).

Application in chambers as to parties to be served.

In a case where it was necessary to determine on the construction of a will whether the members of a class took *per capita* or *per stirpes*, as the members of the class were known, the court could not appoint the persons before it to represent the class under Ord. XVI. r. 32, it was held that the proper course to adopt was to apply in chambers, to have it ascertained who were the parties interested, and who ought to be served (*k*).

Advantage to an executor of having questions decided by the court.

The above rules give an executor or administrator a cheap and speedy method of getting the assistance and directions of the court, and he is of course protected where he acts under an order so obtained. In all cases to which the rules apply, the executor or administrator, where there is any doubt or difficulty, should issue an originating summons and have the matter decided by the court, and not rely on the advice of a solicitor or opinion of counsel, which, according to the circumstances, may, or may not, afford him some indemnity. The tendency of the court seems rather to encourage than to discourage applications by executors or administrators under this rule (*l*).

Questions of construction of wills.

An application should, for instance, always be made to the court for its directions under this rule (where it applies) *where there is difficulty in construing the will; as an executor or administrator who, although acting *bona fide*, distributes the estate on what turns out to be an erroneous construction, is liable to make good the funds he has parted with (*m*), and he is also liable to be charged with interest at 4 per cent. on the money he has to make good (*n*); but in a case where the legatee, to whom the money has to be made good, had full knowledge of the erroneous payment and acquiesced in the erroneous view of the will, the court did not make the executor pay interest (*o*).

The court has the same jurisdiction as in an action commenced by writ.

The court has the same jurisdiction as to costs on a summons properly taken out under Ord. LV. as in an ordinary administration action, and it can on such a summons, if the proper parties are before it, deal with the ques-

(*i*) See R. S. C. Ord. LV. r 6.

(*k*) Re Gardiner, W. N. 1887, p. 59.

(*l*) See, for example, the remarks of Stirling, J., in Re Partington, 57 L. T. N. S. 660.

(*m*) Saltmarsh *v.* Barrett, 31 Beav. 349.

(*n*) Atty.-Gen. *v.* Köhler, 9 H. L. C. 654.

(*o*) Re Hulkes, 33 Ch. D. 552.

[*1810]

tion of costs, although no estate or fund be sought to be administered (*p*).

The practice as to administration actions was changed by the rules of the Supreme Court, 1883. "There were formerly in the Court of Chancery numbers and numbers of cases in which an administration suit was necessarily instituted, not because the parties desired the administration of the estate generally, but because there were certain questions—they may have been minute, they may have been limited, they may have been very important—over which the Court would have had no control without the existence of an administration suit. There were no means, according to the old practice, of bringing isolated questions under a will before the Court for its determination except by an administration suit. It was felt that that very often involved parties in an amount of expense which was unnecessary, and which they ought to be relieved from" (*q*).

New practice in administration actions.

In order to avoid this expense, power is expressly given to the court by the rules of 1883 to determine any question without making a judgment or order for the administration of *a trust or of the estate of a deceased person, if the question between the parties can be properly determined without such judgment or order (*r*).

Partial administration.

This power is not confined to the cases which can under Ord. LV. rr. 3 and 4, be raised by originating summons, but under Ord. LV. r. 10, the court has this power, whether the question arise on summons "or otherwise."

This power extends to administration actions commenced before, but tried after, the rule came into operation (*s*).

The question, whether in any particular case it is necessary that a general administration of the estate should be directed, can be referred by the judge to be decided in chambers (*t*).

Question as to whether general administration is necessary can be referred to chambers.

One ground on which the court has since the rules of 1883 directed a general administration is, that without it the executors or administrators cannot be adequately protected. For instance, where a testator had up to his death been engaged in the businesses of a merchant, shipbroker,

Grounds on which the court still makes a decree for general administration.

(*p*) Re Medland, 41 Ch. D. 476.

(*q*) Pearson, J., in Re Wilson, 28 Ch. D. 457, 460.

(*r*) R. S. C. 1883, Ord. LV. r. 10.

(*s*) Re Llewellyn, 25 Ch. D. 66.

(*t*) *Ibid.*

[*1811]

insurance broker, and farmer, and was also the managing owner of six steamers, the proprietor of a colliery, and a partner in two other collieries—in addition, he was the sole defendant in a partnership action relating to one of the collieries, in which heavy claims were made against him by the partners—under these circumstances, questions arose whether any and which of his businesses ought to be carried on, and what ought to be done by his executors as to the defense of the pending action, and how and when his property ought to be realized. On these facts, Chitty, J., directed a general administration, and in addition directed special inquiries with regard to the testator's businesses and shares in ships (*u*).

Binding creditors.

It appears that no order short of a general administration order will bind creditors (*x*).

Smallness of assets.

*In considering whether an order for general administration should or should not be made the court will be governed by the circumstances of each case (*y*); the smallness of the assets is a material circumstance to decide the court against making such an order (*z*).

A direction in a will to obtain general administration does not deprive the court of its discretion.

The fact that the testator has by his will directed his trustees to commence an action for administration does not deprive the court of its discretion to refuse to make an order for general administration; but the court gives weight to such a direction in considering whether the order should, or should not, be made (*a*).

Order for general administration must be made by judge.

No order for general administration can be made except by the judge in person (*b*).

Order for adminis-

Where an executor or administrator either has proceedings commenced against him in respect of debts

(*u*) Re Dickinson, W. N. 1884, p. 199.

(*x*) See Re Mills, W. N. 1884, p. 21, where Pearson, J., expressed such a view; and Re Barrett, 43 Ch. D. 70, where North, J., held that an order for an account under Ord. XV. r. 1, did not put an end to the executor's right to prefer a particular creditor. Orders for limited administration are often productive of expense only, as after a limited order has been made, an order for general administration is frequently found to be necessary. Where it is likely that ultimately an order for general administration will be required, the better way is for the order to be made at once, with a direction that no proceedings are to be taken under it without the leave of the judge. See Ord. LV. r. 10A (b).

(*y*) See hereon Re Wilson, 28 Ch. D. 457, and Re Gyhon, 29 Ch. D. 834.

(*z*) Re Jennings, 28 Sol. Jo. 477.

(*a*) Re Stocken, 38 Ch. D. 319.

(*b*) R. S. C. 1883, Ord. LV. r. 15A.

[*1812]

due from his testator or intestate, or is threatened with such proceedings, it is often very important that an order for general administration of the estate should be obtained, so as to protect it for the general body of creditors, or to give time to properly realize it. Where such a course is necessary there is power for the court or a judge to make the usual judgment or order for administration, with a proviso that no proceedings are to be taken under such judgment or order without leave of the judge in person. Such an order can only be made where the application for administration is by a creditor or beneficiary, not where the application is by the executor or administrator (*c*).

tration with a proviso limiting proceedings under it.

In the same way, upon an application for administration or *execution of trusts by a creditor or a beneficiary where no accounts or insufficient accounts have been rendered, the court or judge may order that the application shall stand over for a certain time, and that the executors, administrators, or trustees, in the meantime shall render to the applicant a proper statement of their accounts, with an intimation that if this is not done they may be made to pay the costs of the proceedings (*d*).

Order to deliver accounts.

An absolute order for sale made in an administration suit operates as a conversion from the date of the order (*e*).

Under Ord. LXV. r. 1, of the rules of the Supreme Court, 1883, the costs of and incident to all proceedings in the Superior Court are in the discretion of the court or judge, with certain exceptions specified in the rule. This general rule applies to all cases in which executors, administrators, or trustees, are instituting suits against strangers to their trust on behalf of their trust estate; and they are, when plaintiffs, subject to the same rules, and personally liable to pay costs, as if they were suing in their own right (*f*).

Costs.

General rule as to an executor's costs.

An executor or administrator fairly instituting an action for the direction of the court, with regard to the trust, will not only be entitled to his own costs, but any person made a party to the suit, for the protection of the executor or administrator, will also have his costs out of the fund (*g*).

(*c*) R. S. C. 1883, Ord. LV. r. 10A (b).

(*d*) Ord. LV. r. 10A.

(*e*) Hyett *v.* Mekin, 25 Ch. D. 735.

(*f*) Dan. Ch. Pr. 1175, 1219, Vol. II. Pt. 1, 6th edit. His right to reimbursement out of the estate will be found dealt with *ante*, pp. *850, *851.

(*g*) Dan. Ch. Pr. 1208, Vol. II. Pt. 1, 6th edit.

The question of an executor or administrator's costs will be found dealt with in a subsequent chapter.

Charges and expenses should not be included in the "bill of costs."

It is a common mistake for executors and administrators in taking in their costs for taxation to include in them items of charges and expenses; this is wrong, as the charges and expenses should be included in their accounts, and allowed for when the accounts are taken.

*Executors and administrators are not entitled to their charges and expenses on taxation without an express direction that they are to be included in the taxation, as the executor or administrator is presumed to retain them out of the estate (*h*).

Practice in allowing charges and expenses.

The ordinary practice now is to allow executors or administrators their costs of action (out of their estate) as between solicitor and client, together with any charges and expenses, properly incurred relating to the trust, beyond costs of action, on the suggestion of counsel, of some particular expenses incurred, and the case must be supported before the taxing master; it is not the practice in taking the account in chambers to allow the charges and expenses incurred since the suit, but they are provided for on further consideration (*i*).

The charges and expenses of an executor or administrator do not include funeral and probate expenses (*k*), nor the costs of other actions unless specially provided for (*l*).

"Just allowances."

In taking any account directed by any judgment or order, all "just allowances" are made without any direction for that purpose (*m*).

The question what are just allowances is usually left to be decided on the taking of the account (*n*).

What are just allowances depends very much upon the circumstances of each case: it is, however, the settled rule, that whatever a trustee or personal representative has expended, in the fair execution of his trust, may be allowed him in passing his accounts (*o*).

Under the head of "just allowances" money which has *been

(*h*) Humphreys *v.* Moore, 2 Atk. 108.
(*i*) Seton, 4th edit. 482.
(*k*) Collis *v.* Robins, 1 D. & S. 131.
(*l*) Payne *v.* Little, 27 Beav. 83.
(*m*) Ord. XXXIII. r. 8.
(*n*) Brown *v.* De Tastet, Jac. 284, 294.
(*o*) Dan. Ch. Pr. 1055, Vol. II. Pt. 1, 6th edit. For instance, in the case of Re Bird, L. R. 16 Eq. 203, an executor was allowed money which he had paid to his solicitor on a misrepresentation by the solicitor, and which the latter had misappropriated.

reasonably expended in taking opinions and procuring directions (*p*), payments by executors in discharge of legacies (*q*), deductions for dower out of rents received by a widow trustee (*r*), expenses of managing and carrying on a partnership business (*s*), and a mortgagee's expenses of seizing and holding possession of a ship, advertising it for sale, and effecting insurances upon it (*t*), have been allowed.

Instances of allowances under this head.

An executor or administrator will not be allowed the charges of his solicitor for doing things which the executor ought strictly to have done himself (*u*).

Improper employment of a solicitor.

When a trader dies, obviously his trade or business descends to his executors or administrators as part of his assets.

Duty of the executor or administrator with regard to the business of the deceased.

It is equally obvious that his trade or business must be either wound up or realized by his executors or administrators or be carried on by them.

The carrying on of the trade or business, too, may be either merely for the purpose of realization or it may be continued for the purpose of making a profit.

In carrying on the trade or business of the deceased for either of the above purposes, the following persons may be affected by the success or failure of the trading:—

(a) Creditors of the deceased.

(b) Beneficiaries under his will.

(c) Creditors whose debts are incurred in the trading subsequently to the death of the deceased.

It is the duty of both an executor and an administrator, where the business of the deceased is a valuable asset, to carry on the business for such reasonable time as may be necessary to enable them to sell it as a going concern (*x*); but the *executor or administrator who carries on the business of his testator makes himself personally liable for all debts so contracted, and it makes no difference that he avowedly acts as executor or administrator (*y*).

To carry it on until it can be realized.

Liability of an executor carrying on the business of the deceased.

(*p*) Fearns *v.* Young, 10 Ves. 184.

(*q*) Nightingale *v.* Lawson, 1 Cox, 23.

(*r*) Graham *v.* Graham, 1 Ves. Sen. 268.

(*s*) Brown *v.* De Tastet, Jac. 284, 299. Cook *v.* Collingridge, Jac. 607, 621.

(*t*) Wilkes *v.* Saunion, 7 Ch. D. 188.

(*u*) Harbin *v.* Darby, 28 Beav. 325.

(*x*) See the remarks of Lord Herschell in Dowse *v.* Gorton, [1891] A. C. 190, at p. 199.

(*y*) Labouchere *v.* Tupper, 11 Moo.

[*1816]

Business carried on merely for the purpose of realization.

Where the business is merely carried on for the purpose of realization, the executor or administrator is entitled to be indemnified by the estate against all liabilities properly incurred by him in so doing, both as against creditors of the deceased and also as against beneficiaries (*z*).

An administrator is only justified in carrying on the business for the purpose of realizing it.

An administrator is only entitled to carry on the business of the intestate for the purpose of realization, and if he does any more than this he renders himself personally liable for the debts so incurred without any right of indemnity out of the intestate's estate (*a*), and any assets acquired in such trading belong to the intestate's estate, subject to the right of the administrator to be indemnified for what he has expended in obtaining such assets (*b*).

An executor is on the same footing unless the will authorizes him to carry on the business.

An executor who is not expressly or impliedly authorized by the will of his testator to employ the whole or some part of the estate in carrying on the business is in the same position as an administrator (*c*).

The executor's right to be indemnified out of the assets.

Where the executor is authorized by the will to carry on the business of his testator, and to apply the whole or some portion of the estate to that purpose, although he is personally liable for the debts he incurs in carrying on the business, he has the right to be indemnified out of the specific assets which he is authorized to employ in the business (*d*). He is entitled under the will to this protection as against beneficiaries, and if any creditors of the testator *know of his carrying on the business, and acquiesce in his so doing, he is entitled to the same indemnity as against them (*e*).

As against both beneficiaries and creditors.

An executor who carries on the business of his testator can sue as executor for debts incurred to the estate in carrying on the trade since the testator's death (*f*).

The subject of the rights and liabilities of an executor or adminis-

P. C. 198. This subject will be found more fully treated of in an earlier chapter. See *ante*, p. *1682 *et seq.*

(*z*) Dowse *v.* Gorton, [1891] A. C. 190.

(*a*) Re Evans, 34 Ch. D. 597. See also Strickland *v.* Symons, 22 Ch. D. 666. 26 Ch. D. 245.

(*b*) Re Evans, *supra.*

(*c*) A direction to carry on the testator's business authorizes the employment in it of the capital left in the business by the testator at his death: M'Neillie *v.* Acton, 4 D. M. & G. 744.

(*d*) *Ex parte* Garland, 10 Ves. 120.

(*e*) Dowse *v.* Gorton, [1891] A. C. 190.

(*f*) Abbott *v.* Parfitt, L. R., 6 Q. B. 346.

trator carrying on the business of the deceased will be found further dealt with in a subsequent chapter.

Numerous statutes have been passed providing facilities for executors in the discharge of their duties, and relieving them from some of the responsibilities incident to their office.

Thus by stat. 10 & 11 Vict. c. 96, entitled, *An Act for better securing Trust Funds, and for the Relief of Trustees* (*g*), after reciting that "it is expedient to provide means for better securing trust funds, and for relieving trustees from the responsibility of administering trust funds in cases where they are desirous of being so relieved," it is enacted, "That all trustees, executors, administrators, or other persons, having in their hands any money belonging to any trust whatsoever, or the major part of them, shall be at liberty, on filing an affidavit shortly describing the instrument creating the trust, according to the best of their knowledge and belief, to pay the same, with the privity of the Accountant-General (*h*) of the High Court of Chancery, into the Bank of England, to the account of such Accountant-General in the matter of the particular trust (describing the same by the names of the parties, as accurately as may be, for the purpose of distinguishing it) (*i*), in trust to attend the orders of the *said Court; and that all trustees or other persons having any annuities or stocks standing in their names in the books of the governor and company of the Bank of England or of the East India Company, or South Sea Company, or any government or parliamentary security standing in their names, or in the names of any deceased persons of whom they shall be personal representatives, upon any trust whatsoever, or the major part of them, shall be at liberty to transfer or deposit such stocks or securities into or in the name of the said Accountant-General (*k*), with his privity, in the matter of the particular trust (describing the same as aforesaid), in trust to attend the orders of the said Court: and in every such case the receipt of one of the cashiers of the said Bank for the money so

10 & 11 Vict. c. 96, s. 1.

Trustees may pay trust moneys or transfer stocks and securities into the Court of Chancery.

(*g*) The Judicature Act, 1873, s. 34, assigns the jurisdiction under this act to the Chancery Division of the High Court.

(*h*) Now the Paymaster-General.

(*i*) Where executors paid money into court to an account headed "In the matter of the trusts of the Will of S. J.," the court held that the account was too general to enable it to act under this statute: Re Joseph's Will, 11 Beav. 625. See also Re Robinson's Trust, 1 Jur. N. S. 750.

(*k*) Now the Paymaster-General.

paid, or, in the case of stocks or securities, the certificate of the proper officer, of the transfer or deposit of such stocks or securities, shall be a sufficient discharge to such trustees or other persons for the money so paid, or the stocks or securities so transferred or deposited."

Receipt of bank cashier, or certificate of proper officer, to be sufficient discharge.

Under the Amending Act (The Trustee Relief Act, 1849) (*l*), where the major part of the trustees are desirous of taking advantage of the Trustee Relief Act and paying their funds into court, the court can make an order authorizing the funds to be paid or delivered into court by the major part of the trustees without the concurrence of the other trustees.

Trustee Relief Act, 1849. 12 & 13 Vict. c. 74.

Where the difficulty arises through the infancy or absence beyond seas of a person entitled to a legacy, it can still be paid into court under the Legacy Duty Act, after deducting the duty payable in respect of the legacy (*m*).

Legacy Duty Act.

Funds which do not exceed 500*l.* in amount or value can be paid by the trustees into a post-office savings bank, established in the town where the court of the district in which any of the trustees or other persons reside is held, in the name of the registrar of the court, in trust to *attend the orders of the court, and the payment out can be ordered by the County Court (*n*).

Funds not exceeding 500*l.*

Foreign bonds do not, it seems, fall within the Trustee Relief Acts (*o*), but all railway stock and India stock can be brought into court under the provisions of the Amending Act (The Trustee Relief Act, 1849) (*p*).

Foreign bonds.

Trustees who hold money belonging to a charity can pay the money to the official trustee of charitable trusts (*q*), and should not pay it into court under the above act, although they have a strict right to do so if they choose (*r*).

Charity funds.

The affidavit may be written or printed; the lodgment schedule annexed to it must be printed (*s*). It can be made by one of several trustees (*t*).

The affidavit in support.

A trustee paying money into court under the Trustee Relief Act

(*l*) 12 & 13 Vict. c. 74.

(*m*) 36 Geo III. c. 52, s. 32.

(*n*) See Annual County Court Practice, 1893, pp. 465, 466.

(*o*) Re Lloyd, 2 W. R. 371.

(*p*) 12 & 13 Vict. c. 74.

(*q*) Under 18 & 19 Vict. c. 124, ss. 22 and 23.

(*r*) Re Poplar School, 8 Ch. D. 543.

(*s*) Supreme Court Funds Rules, 1886, r. 41. Ann. Pr. 1893, vol. ii. p. 261.

(*t*) Anon., 1 Jur. N. S. 974.

must annex to the affidavit to be filed by him pursuant to that act a schedule in the same printed form as the lodgment schedule to an order, setting forth:

The schedule to the affidavit.

(a) "His own name and address;

(b) "The amount and description of the funds proposed to be lodged in Court;

(c) "The ledger credit in the matter of the particular trust to which the funds are to be placed;

(d) "A statement whether legacy or succession duty (if chargeable), or any part thereof, has or has not been paid;

(e) "A statement whether the money or the dividends on the securities so to be lodged in Court, and all accumulations of dividends thereon, are desired to be invested in any and what description of government securities, or whether it is deemed unnecessary so to invest the same" (*u*).

Investment of funds paid into court.

*When funds are paid into court under the Trustee Relief Acts, the Chancery Division has power under sect. 2 of the Trustee Relief Act, 1847 (*x*), to make orders "for the investment and payment of any such moneys, or of any dividends or interest on any such stocks or securities, and for the transfer and delivery out of any such stocks and securities, and for the administration of any such trusts generally."

This jurisdiction can be exercised upon a petition presented in a summary way, or, in some cases, upon a summons, the petition or summons itself originating the proceedings (*y*).

If it appears in any case that the trust funds cannot be safely distributed without a suit or suits, the court can direct such suit or suits to be instituted (*z*).

Application for payment out.

Application for payment or transfer out of court or investment of funds paid into court under the Trustee Relief Acts should be by originating summons where the money or securities in court do not exceed 1,000*l.* or 1,000*l.* nominal value (*a*). In all other cases the application should be by petition.

As a general rule, the costs of paying a fund into court by the ex-

(*u*) Supreme Court Funds Rules, 1886, r. 41.

(*x*) 10 & 11 Vict. c. 96.

(*y*) 10 & 11 Vict. c. 96, s. 2. As to the cases in which the application can be by summons, see *post*.

(*z*) *Ibid.*

(*a*) R. S. C. Ord. LV. r. 2 (5). See *post*, p. *1886.

[*1820]

ecutor or administrator, ought to be paid out of the general estate (*b*), but if the fund has already been completely severed from the general estate, and appropriated, the costs of payment in ought to come out of the fund itself (*c*). The costs of paying the fund out of court generally fall upon the fund itself (*d*), but the court can, on a proper application, order them to be paid by the general estate, where such general estate remains in the hands of the executor (*e*).

Costs of paying the fund into and out of court.

The trustee paying money into court is *prima facie* entitled to his costs of payment in and of his appearance on *the petition or summons for payment out, but the court has a discretion to deprive him of costs if he pays money in vexatiously (*f*), but not when he acts under a mere misapprehension (*g*). Upon the application for payment out, the jurisdiction of the court is limited to the fund which has actually been brought into court; and it cannot order repayment by the trustees of costs and expenses deducted by them on the payment in; if it can be shown that the costs and expenses have been improperly retained, separate proceedings must be taken against the trustees to recover the amount (*h*).

Trustees costs of payment into and out of court.

The occasions on which trustees should pay funds in their hands into court have been considerably lessened by the recent rules of the Supreme Court (*i*). Under Ord. LV. r. 3, trustees can now obtain the directions of the court cheaply and quickly, in many cases in which formerly they would have been properly advised to pay their funds into court. For instance, trustees who are desirous of ascertaining who are the persons entitled to a fund, or of having the question who are entitled to the fund determined by the court, should not pay the fund into court under the Trustee Relief Acts (*k*), but should take out a summons under Ord. LV. r. 3 (*l*), to have such persons ascertained by the court (*m*). Trustees should also remember that the payment of funds into court, and the subsequent application for payment out

Trustees should not pay funds into court unnecessarily.

(*b*) Re Cawthorne, 12 Beav. 56. Re Jones, 3 Drew. 679.

(*c*) Re Lorimer, 12 Beav. 521.

(*d*) Re Dickson, 1 Sim. 37. Re Ross, *ibid.* Re Jones, *supra.* Re Robertson, 6 W. R. 405. Re Wilson, 14 W. R. 161.

(*e*) Re Trick, L. R., 5 Ch. 170.

(*f*) See Morgan's Chancery Acts, 6th edit. 54.

(*g*) Re Jenkins, 3 N. R. 408.

(*h*) Re Parker's Will, 39 Ch. D. 303.

(*i*) R. S. C. 1883.

(*k*) *Supra*, p. *1817 *et seq.*

(*l*) See *supra*, pp. *1806, *1807.

(*m*) Re Giles, 55 L. J. Ch. 695.

of court, are expensive processes which ought to be avoided, in the interests of their *cestui que trust*, where any other reasonable and safe course is open to them.

An executor and administrator is entitled, after taking reasonable means of ascertaining the debts owing by the dead man, to distribute the balance of the estate amongst the beneficiaries.

22 & 23 Vict. c. 35, s. 29. Executors, &c., may distribute assets after due notice to creditors and others to send in claims.

*By 22 & 23 Vict. c. 35, s. 29, it is enacted that "where an executor or administrator shall have given such or the like notices as in the opinion of the Court in which such executor or administrator is sought to be charged, would have been given by the Court of Chancery in an administration suit (*n*), for creditors and others to send in to the executor or administrator their claims against the estate of the testator or intestate, such executor or administrator shall, at the expiration of the time named in the said notices or the last of the said notices for sending in such claims, be at liberty to distribute the assets of the testator or intestate, or any part thereof, amongst the parties entitled thereto, having regard to the claims of which such executor or administrator has then notice, and shall not be liable for the assets or any part thereof so distributed to any person of whose claim such executor or administrator shall not have had notice at the time of distribution of the said assets or a part thereof, as the case may be; but nothing in the present Act contained shall prejudice the right of any creditor or claimant to follow the assets or any part thereof into the hands of the person or persons who may have received the same respectively" (*o*).

The section applies to claims of next of kin as well as creditors (*p*). But of course does not protect executors against claims of which they have notice (*q*). It protects them whether they have paid over the legacies or only appropriated them (*r*).

(*n*) As to advertisements, see R. S. C. Ord. LV. r. 44. See also Wood *v.* Weightman, L. R. 13 Eq. 434, and Dan. Ch. Pr. 6th edit. 1014. There is no rule of practice that in every case the advertisement must be inserted in the "Times" or some other London daily newspaper, in addition to the "London Gazette": Re Bracken, 43 Ch. D. 1. See also *ante*, pp. *1206, *1207.

(*o*) Sect. 27 of this act enables executors and administrators to distribute the dead man's estate after providing for liabilities on leaseholds held by him.

(*p*) Newton *v.* Sherry, 1 C. P. D. 246.

(*q*) Re Land Credit of Ireland, W. N. 1872, p. 210. Wood *v.* Wood, 21 W. R. 135.

(*r*) Clegg *v.* Rowland, L. R. 3 Eq. 368. Hunter *v.* Young, 4 Ex. D. 256.

There are several ways in which the opinion and directions *of the court can be obtained where the parties interested are agreed as to the point which they wish to be decided, without going to the expense of an action protracted through all its stages. Two of the methods only are specially applicable to proceedings by and against executors or administrators, but as all can be, and often are, used by executors and administrators, it will be useful to mention all of them.

Methods of obtaining the advice and direction of the court.

1. By section 30 of Lord St. Leonards' Act (22 & 23 Vict. c. 35), it is provided that "any trustee, executor, or administrator shall be at liberty without the institution of a suit, to apply by petition to any judge of the High Court of Chancery, or by summons upon a written statement to any such judge at chambers, for the opinion, advice, or direction of such judge on any question respecting the management or administration of the trust property or the assets of any testator or intestate, such application to be served upon, or the hearing thereof to be attended by, all persons interested in such application, or such of them as the said judge shall think expedient; and the trustee, executor, or administrator acting upon the opinion, advice, or direction given by the said judge shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee, executor, or administrator in the subject-matter of the said application: Provided, nevertheless, that this Act shall not extend to indemnify any trustee, executor, or administrator in respect of any act done in accordance with such opinion, advice, or direction as aforesaid, if such trustee, executor, or administrator shall have been guilty of any fraud, or willful concealment or misrepresentation in obtaining such opinion, advice, or direction; and the costs of such application as aforesaid shall be in the discretion of the judge to whom the said application shall be made."

Trustee, executor, &c., may apply by petition to judge of Chancery for opinion, advice, &c., in management, &c., of trust property.

Rules 19–22 of Order LII. of the rules of the Supreme Court, 1883, prescribe the form of applying for advice of the judge under the above section.

It has been held that the court will not, upon a petition or summons presented by a trustee or executor under this *enactment, construe an instrument or make any order affecting the rights of parties, decide questions of detail where affidavits are required, or decide questions of considerable difficulty, nor will it pronounce an opinion

[*1823] [*1824]

on a hypothetical case (*s*). Such a petition or summons (*t*) should relate only to the management and administration of the trust property in the manner which will be most for the advantage of the parties beneficially interested (*u*).

2. By application by originating summons under Ord. LV. r. 3. The cases in which the opinion and directions of the court can be obtained on originating summons will be found dealt with in an earlier part of this chapter. This mode of procedure is so much cheaper that it has practically rendered obsolete the procedure under Lord St. Leonards' Act.

3. By special case. A special method of obtaining the opinion of the court by means of a special case was provided by the 13 & 14 Vict. c. 35 (*x*). The statute was repealed by 46 & 47 Vict. c. 49, but its provisions are kept alive by Ord. XXXIV. r. 8, which provides: "Any special case may hereafter be stated, for the same purposes and in the same manner as was provided by the Act 13 & 14 Vict. c. 35, and the same shall be deemed to be a special case stated in a matter within the meaning of the order" (*y*).

4. On statement of claim. Under the new practice of the rules of the Supreme Court the institution of an action is a not very expensive procedure, and where the facts can be agreed on between the parties they can be stated in the plaintiff's statement of claim, and the action brought on for hearing on the facts so stated. In an action so instituted, the court has full jurisdiction over the whole matter, and can make binding declarations of right (*z*).

*5. The questions may be raised on issues of fact without pleadings (*a*). As this method presents no special advantage to executors or administrators, no further mention need here be made of it.

Salvage cases.

The court has sometimes on the principle of salvage, authorized an expenditure out of capital, for the purpose of preventing loss or destruction to settled property, which ordinarily should be paid for out of income. In a recent case (*b*),

(*s*) See hereon Morgan's Chancery Acts, 6th edit. p. 103.

(*t*) The petition or statement should be signed by counsel: 23 & 24 Vict. c. 38, s. 9.

(*u*) Re Lorenz, 1 Dr. & Sm. 401, *per* Kindersley, V.-C. See also Re Hooper's Will, 7 Jur. N. S. 595.

(*x*) See sects. 1 and 15.

(*y*) For the practice under the 13 & 14 Vict. c. 35, see Morgan's Chancery Acts, 5th edit. p. 118. And see also Ann. Pr. 1893, p. 635.

(*z*) See Ord. XXV. r. 5.

(*a*) Ord. XXXIV. rr. 9–12.

(*b*) Conway *v.* Fenton, 40 Ch. D. 512.

Kekewich, J., authorized trustees of a settlement to lay out 800*l.*, part of settled personalty, in repairs and improvements on a farm forming part of the real estate comprised in the same settlement. This expenditure was authorized on evidence that the farm could not be let or sold, and that it would deteriorate unless the repairs were done, and that the tenants for life could not make the expenditure out of their income (*c*). The principle seems to have been carried to its fullest extent in the case of Re Household (*d*), where V.-C. Bacon, in exercise of such a jurisdiction, authorized the trustees of real and personal estate devised and bequeathed on trust for a father for life, with remainder to his children, to advance part of the money to the father (the tenant for life) for the purpose of stocking and cultivating a farm forming part of the real estate, the evidence showing that the farm could not be let at a remunerative rate, and, unless the advance was made, the farm would go out of cultivation and deteriorate in value.

Sale of testator's business to a company.

In the case of Re Crawshaw (*e*) an application was made to the court to sanction the sale of large businesses, in which the testator was interested, to a limited company formed for the object of acquiring such businesses. The testator had given large legacies, some of which were settled, and the evidence showed that it was impossible to satisfy *the testator's creditors and beneficiaries without a realization of the testator's partnership businesses and properties, and it was considered that such businesses and property if sold at once would, in consequence of trade depression, be sold at a serious sacrifice. The proposed scheme provided that the proposed company should pay for the businesses and property by means of debentures and fully paid-up shares in the company, which were to be appropriated to the persons entitled to the pecuniary legacies or their trustees. The will contained a power to invest in "the stocks, funds, shares and debentures, mortgages or securities of any corporation or company." North, J., held that he had no jurisdiction to sanction the scheme, which he thought an alteration of the trusts of the will, the investment clause only contemplating a going company, but he gave leave to apply to Parliament for a private act authorizing the carrying out of the proposed scheme.

(*c*) See also Frith *v.* Cameron, 21 Ch. D. 786. Re Jackson, 21 Ch. D. 786. Glover *v.* Barlow, 21 Ch. D. 788, note. Re Household, 27 Ch. D. 553.

(*d*) 27 Ch. D. 553.

(*e*) 60 L. T. 357.

[*1826]

The ground on which North, J., held that the investment clause did not apply, namely, that the power contemplated a sale to a going company, not to a company merely formed to define and limit the liability of the persons already interested in the partnership business, seems a narrow one, and the same remark applies to another ground stated by his lordship, that the power contemplated a sale, and by the scheme the parties would not sell but retain the property in specie, as wherever property is sold for shares in a company the seller to some extent retains an interest in the property sold. The cases in which the court has exercised its original jurisdiction over settled property in order to prevent its loss or destruction do not appear to have been cited in Re Crawshaw (*f*), but the principle embodied in them would seem to apply to such a case.

(*f*) 60 L. T. 357.

---

† *Equity jurisdiction — Administration suits.* A court of equity has, in general, no jurisdiction where there is an adequate remedy by action at law, Nash *v.* Hogan, 18 Stew. (N. J.) 108; Bailey *v.* Briggs, 56 N. Y. 407; or in the Probate Court. Atchison *v.* Smith, 25 Tex. 228. On the other hand, the statutory jurisdiction of the United States circuit courts (between citizens of different states) cannot be defeated by state laws giving exclusive jurisdiction to state courts. Lawrence *v.* Nelson, 143 U. S. 215; Green *v.* Creighton, 23 How. 90; Payne *v.* Hood, 7 Wall. 425. A bill in equity will not lie to enjoin the Probate Court from entering a decree which would work injury to the administrator by ordering payment to parties in disregard of their alleged releases, Wright *v.* Fleming, 76 N. Y. 517; especially for payments made before settlement in the Probate Court, with no averment that the Probate Court had failed to consider them. Gaillard *v.* Thomas, 61 Miss. 166. So, equity will not grant relief to an executor who confessed judgment upon a miscalculation of the assets, except where they had subsequently unexpectedly depreciated, Brenner *v.* Alexander, 16 Or. 349; but not on the ground of an alleged agreement or understanding with the judgment creditor that no steps should be taken to enforce the judgment against the sureties or personally against the administrator. Weakley *v.* Gurley, 60 Ala. 399. The executor cannot maintain an action against a person who claims to be the widow of the testator, to bar her from asserting her dower rights, on the ground of invalidity of the alleged marriage, Paige *v.* Fagan, 61 Wis. 667; nor can he sue in equity to remove a cloud on the title to testator's realty. Ryan *v.* Duncan, 88 Ill. 144.

On the other hand, an administrator may file his bill in equity to marshal the assets of an insolvent estate, enjoin needless and vexatious suits by creditors, and enforce liens. Johnson *v.* Flanders, 65 Ga. 691. Equity will enjoin suits against an administrator by creditors of the estate in cases of great complication and difficulty, Beers *v.* Strohecker, 21 Ga. 442; and

even enjoin the execution on a judgment *de bonis intestatis* where the estate has been declared insolvent, Lambert *v.* Mallett, 50 Ala. 78; or relieve against a judgment by default, where there were sufficient assets which have been since lost by the recovery of an adverse title, Royall *v.* Johnson, 1 Rand. 421; or where the executor was unable to plead and prevent judgment by reason of the perplexing condition of the estate, Pickett *v.* Stewart, 1 Rand. 478; or where the assets afterward failed by an unexpected depreciation (although in this case the judgment was entered by confession of the executor), Miller *v.* Rice, 1 Rand. 438; or compel payment of a fire insurance policy upon property of the deceased where the administrator has continued to pay the premiums and there is a dispute between the heir and the administrator as to their respective rights. Portsmouth Insurance Co. *v.* Reynolds, 32 Gratt. 613 Equity will not, however, undertake the settlement of an estate belonging to the Probate Court. Beach *v.* Norton, 9 Conn. 182, 196. But chancery jurisdiction attaches to a trust, though the effect is to take the administration of an estate out of the Probate Court. Cowles *v.* Whitman, 10 Conn. 121. Thus, equity will compel persons who for a long period have been intrusted with property of a decedent during his lifetime to account to the administrator. Webb *v.* Fuller, 77 Me. 568. Equity will aid an administrator in the recovery of assets, irrespective of whether the assets are for debts or for distribution, Shaver *v.* Shaver, Saxt. 437; and will protect the estate in the hands of a temporary administrator, pending litigation in the Probate Court, by the appointment of a receiver. Briarfield Iron Works *v.* Foster, 54 Ala. 622. Equity may decree the settlement of an unliquidated demand in favor of the estate at the suit of the administrator, Hunt *v.* Potter, 58 Miss. 96; or enforce notes secured by mortgage on which disputed credits are indorsed, Bell *v.* Faison, 53 Miss. 354; or enforce the vendor's lien on lands sold under probate decree, Wallace *v.* Nichols, 56 Ala. 321; or enforce an equitable set-off. Hemphill *v.* Moody, 64 Ala. 468. So, equity will decree an accounting on the part of judgment and mortgage creditors of the deceased and sale of the lands upon which they have liens, Kirkman *v.* Phipps, 86 N. C. 428; and will entertain an action by the personal representative to redeem lands of the estate from a mortgage, Libby *v.* Cobb, 76 Me. 471; where he has obtained an order of sale from the Probate Court. Mason *v.* Daly, 117 Mass. 403. Executors of a mortgagee have such an interest in a controversy affecting the mortgaged premises as entitles them to go into equity for a satisfaction of the mortgage out of the property covered by it. Copper *v.* Wells, Saxt. 10. And even a special administrator may sue to redeem land from a mortgage, when the right to redeem might be barred by foreclosure before the qualification of a general administrator. Libby *v.* Cobb, 76 Me. 471. So, a court of equity may subject lands to the payment of debts, Maxwell *v.* Smith, 86 Tenn. 539; and even of debts to which the personal representative has failed to plead *plene administravit.* Henry *v.* Mills, 1 Lea 144. So, an administrator may file a bill in equity against the decedent's surviving partner for an accounting and for a sale of the partnership assets. Freeman *v.* Freeman, 136 Mass. 260; and see p. *1660, n., *ubi supra.*

Construction of will. Chancery has jurisdiction to entertain the bill of an executor or administrator *cum testamento annexo* for construction of the

will, Benham *v.* Hendrickson, 5 Stew. 441; Hudgins *v.* Fanning, 4 Baxt. 574; Carroll *v.* Richardson, 87 Ala. 605; and executors applying for construction and making distribution according to the decree are protected by it, Fraser *v.* Page, 82 Ky. 73; *e. g.*, where the will affects real property, Drake *v.* Drake, 11 Civ. Pro. 77; S. C. 41 Hun 366; or as incidental to a suit to fasten a trust upon property, Wager *v.* Wager, 89 Ky. 161; or to a bill for distribution under a testamentary trust. Fraser *v.* Page, 82 Ky. 73. So, where there are questions as to the character of certain rents as realty or otherwise, and as to the charge of an annuity on the lands, and as to the amount to be paid under a testamentary direction to pay "such sums as are necessary to the maintenance" of a legatee. Douglas *v.* Yost, 64 Hun 155. A bill for construction may be filed after a partial distribution made without notice to the complainant, Adams *v.* Adams, 1 Dick. (N. J.) 298; but not after a final distribution and accounting. Miles *v.* Strong, 60 Conn. 393.

Such bill may be filed by the personal representative or by any party in interest. Annin *v.* Van Doren, 1 McCart. 136; *New Jersey* (1877 Rev. 396, § 2); Keteltas *v.* Keteltas, 53 How. Pr. 65; First Baptist Church *v.* Robberson, 71 Mo. 326; *e. g.*, by an heir at law, Matteson *v.* Matteson, 51 How. Pr. 276; Harris *v.* Slaght, 46 Barb. 471; Walrath *v.* Handy, 54 Barb. 259; even to declare invalid a remainder devised to a charity and to remove the cloud from the heir's title, Hemmje *v.* Meinen, 20 N. Y. Supp. 619; Stephenson *v.* Short, 92 N. Y. 433; or by a devisee, Jones *v.* Jones, 1 How. Pr. N. S. 510; *New York* (Code C. P. § 1866); or a beneficiary under a continuing trust. Giraud *v.* Giraud, 58 How. Pr. 175. But such a suit cannot be brought in equity by a widow having only a legal interest, Anderson *v.* Anderson, 112 N. Y. 104; nor by an heir at law where his rights could be sufficiently determined in an action of ejectment, Whitney *v.* Whitney, 63 Hun 59; Bowers *v.* Smith, 10 Paige 193; Post *v.* Hover, 33 N. Y. 593; nor solely to declare the will invalid, Higgins *v.* Union Trust Co., 32 N. Y. S. R. 197; nor by an heir at law adversely interested, Horton *v.* Cantwell, 108 N. Y. 255; Chipman *v.* Montgomery, 63 N. Y. 221; nor solely for construction by a legatee, Bradhurst *v.* Field, 32 N. Y. S. R. 430; Sutherland *v.* Roland, 11 Hun 328; or devisee, Duncan *v.* Duncan, 4 Abb. N. C. 275; nor by a legatee where there is no trust, Walrath *v.* Handy, 54 Barb. 259; nor by a legatee to determine whether the condition of the legacy has been sufficiently performed. Hobart College *v.* Fitzhugh, 27 N. Y. 130. So, a devisee in possession cannot have a bill in equity to establish the will against the heirs. Anderson *v.* Anderson, 112 N. Y. 104. But courts of equity have jurisdiction to "set up" a will that has been lost or destroyed and establish its validity. Wisener *v.* Maupin, 2 Baxt. 342.

In some states the power to construe wills is expressly conferred by statute. See *New York* (Code C. P. § 1866); Drake *v.* Drake, 41 Hun 366. So, to declare a will void for the incapacity of the testator. Pryer *v.* Howe, 40 Hun 383. A court of equity may, after probate, determine the validity of a codicil charging a legacy on the land in a proceeding by a devisee for the construction of the will, Wilkinson *v.* Trustees, 11 Stew. (N. J.) 514; but the power to construe will not be carried to the extent of reforming a will, Anderson *v.* Anderson, 112 N. Y. 104; and it cannot establish an unexecuted paper as a will, even where the power is given by statute to determine the "validity, construction, and effect." Nelson *v.* Mc-

Donald, 61 Hun 406; *New York* (Code C. P. § 1866).

In order to sustain an action by an executor or administrator for the construction of a will it must appear that there is some continuing duty, some trust requiring action on his part. Casperson *v.* Dunn, 15 Stew. (N. J.) 87; Powell *v.* Denning, 22 Hun 235. Thus, when the testatrix charged all her real estate with payment of all "just debts, funeral and testamentary expenses, and all of the pecuniary legacies," with no words of trust or power in the executor to execute a conveyance or to sell or distribute the proceeds of a sale, it was held that the executor could not maintain an action for construction of the will and for directions and instructions as to the same. Dill *v.* Wisner, 88 N. Y. 153. So also, an executor having no title as such in the realty of the testator, and not alleging that there is personal property in his hands for distribution, cannot maintain a bill for construction. Parker *v.* Parker, 119 Mass. 478. On a bill for construction and direction filed by an executor the court will not adjudicate upon the nature of the estate of the devisees under the will, where the executor as such has no interest in the question. House *v.* Ewen, 10 Stew. (N. J.) 368; Miles *v.* Strong, 60 Conn. 393. So, in a suit for construction by the executors, the court will not decide questions relating to the validity of assignments made by beneficiaries under the will. Jackson *v.* Thompson, 84 Me. 44. But on a bill by the executor for construction, and for final settlement of his accounts, the assignees of a legatee are proper parties, and their rights, as against such legatee, may be determined. Barnes *v.* Blake, 58 Hun 525. But see as to determination of the rights of the surviving husband of a legatee, Grimball *v.* Patton, 70 Ala. 626. An executor cannot file a bill in equity to determine whether an undisposed-of remainder after the death of a life tenant goes to the heirs or residuary devisees, Wilbur *v.* Moxam, 133 Mass. 541; nor as to a question, the determination of which can only become necessary in the future, *e. g.*, whether a devisee takes a life estate or fee. Turner *v.* Lyman, 64 Vt. 167; Blair *v.* Johnson, 64 Vt. 598. In an action for construction, if the executor simply sets out the will and asks the court to construe it, leaving the matter to be litigated between the parties interested, the complaint is in the nature of a bill of interpleader, Wheeler *v.* Hartshorn, 40 Wis. 83; and where heirs and all persons in interest are parties, it has been held that it is within the proper scope of the action to determine what disposition should be made of the estate upon the death of the life tenant, and that the decision of the court that the entire estate was personalty and distributable as such was binding upon all parties to the action, including heirs. Matter of Vedder, 2 Connoly 548.

Even when a will has been admitted to probate, it may be declared invalid, in a proceeding brought to construe and enforce it, on a cross petition directly attacking its validity. Kelsey *v.* Kelsey, 57 Ia. 383. But an executor cannot maintain an action for construction in the Supreme Court of New York pending a proceeding involving that issue in the surrogate's court. Both courts having concurrent jurisdiction, that which first obtains jurisdiction is entitled to retain it. Garlock *v.* Vandevort, 128 N. Y. 374. And executors have no standing to obtain a judicial construction, in the domestic courts, of a foreign will, although the property devised, the trustee, and the *cestui que trust* are within the jurisdiction and residents of the state where the construction is sought. Cross *v.* United States Trust Co., 61 Hun 282.

Bill for direction. A court of equity has jurisdiction of bills for direction to executors or administrators. Tredwell *v.* Cordis, 5 Gray 341; Youmans *v.* Youmans, 11 C. E. Gr. 149. Direction may be given to executors incidental to the construction of a will. Pond *v.* Allen, 15 R. I. 171. In such a proceeding chancery will solve doubtful questions of construction, Seaver *v.* Lewis, 14 Mass. 83; Bonnell *v.* Bonnell, 2 Dick. (N. J.) 540; Crosby *v.* Mason, 32 Conn. 482; Goodhue *v.* Clark, 37 N. H. 525; Pitman *v.* Ashley, 90 N. C. 612: Beirne *v.* Beirne, 33 W. Va. 663; but such applications for advice by executors are not favored by the courts on account of the delay and expense involved. Crosby *v.* Mason, *ubi supra.* And the bill will be dismissed where there is no doubt as to the duty of the executor. Baxter *v.* Baxter, 16 Stew. (N. J.) 82; Douglas *v.* Yost, 64 Hun 155; Casperson *v.* Dunn, 15 Stew. (N. J.) 87; Robinson *v.* McDiarmid, 87 N. C. 455. So, if he has no present embarrassment preventing the performance of his duties, in which case a demurrer will lie, Rexroad *v.* Wells, 13 W. Va. 812; or where it does not appear that he has any funds wherewith to execute the direction of the will which is questioned. Rothgeb *v.* Mauck, 35 O. St. 503. In an action by an executor for advice and direction as to the execution of a trust the court will not consider any matter other than that involved in the administration of the trust estate. Kincaid *v.* Beatty, 98 N. C. 337. The court will, however, entertain jurisdiction even of a suit for interpleader as a bill for direction. Stevens *v.* Warren, 101 Mass. 564. And the executors may file a bill for advice and directions as to distribution among conflicting claims against the estate. Miles *v.* Peabody, 64 Ga. 729. So, a bill by the executor to ascertain the respective rights of defendants in testator's estate (not maintainable as a bill of interpleader because of the executor's interest in the subject matter) may be regarded as a bill for instructions, although praying that defendants be compelled to interplead, Chase *v.* Ladd, 155 Mass. 417; but a bill of interpleader for instruction is not a proper mode to try the claims of creditors barred by the Statute of Limitations. Bradford *v.* Forbes, 9 Allen 365. As to conditions under which a trustee under a will cannot maintain a bill for instructions generally, see Proctor *v.* Heyer, 122 Mass. 525.

Bill for discovery. An executor or administrator may have a bill in equity for the discovery of assets, *e. g.*, to ascertain particulars as to the terms of a security that has been lost, Wade *v.* Pritchard, 69 Ill. 279; Grimes *v.* Hilliary, 38 Ill. Ap. 246; or to disclose a secret trust under which personal property was delivered by the decedent, Gibbens *v.* Peeler, 8 Pick. 254; or to disclose the transactions of the defendant as general agent for the deceased, Simmons *v.* Simmons, 33 Gratt. 451; or to establish the payment of an alleged mortgage debt of the decedent. Craig *v.* Doherty, 61 Miss. 96. A bill in equity to uncover assets for the payment of debts of the decedent should be in behalf of all creditors, and all must share expenses, to be paid out of the recovery. Jackson *v.* McNabb, 39 Ark. 111.

In some of the United States a summary proceeding in the nature of a bill in equity is given by statute to the personal representative for that purpose. *New York* (Code C. P. § 2706–14), *Michigan* (1882 An. Stats. § 5876). The New York act applies to property originally received by the intestate and afterward held under agreement with the administrator, Matter of Cunard, 2 Connoly 16, affd. 54 Hun 637; and to the public administrator acting under letters issued to him by the surrogate. Matter of Elias, 2 How. Pr. N. S.

158; but not to a mere indebtedness to the estate. Matter of May, 6 Dem. 346.

In other states these statutes have been held to apply as well to open and adverse claims as to cases of concealment, Eans *v.* Eans, 79 Mo. 53; but not (before 1881) to lands held by the heirs adversely to a grantee of the executor. Newkirk *v.* Tracey, 61 Mich. 174. Nor to actions brought by creditors or other persons interested against the executor or administrator. Meinzer *v.* Bevington, 42 O. St. 325. As to procedure under such statutes, see also, Matter of Mapes, 32 N. Y. S. R. 786; Matter of Curry, 1 Civ. Pro. 319; Matter of Spreen, 1 Civ. Pro. 375; Matter of Wing, 41 Hun 452; Perrin *v.* Calhoun 49 Mich. 342; Severn *v.* Yoran, 15 Or. 644.

Fraudulent conveyance by decedent. As the representative of creditors, an executor or administrator may bring an action in equity to set aside a conveyance of the decedent made in fraud of creditors, Croswell on Exrs. § 622; Schouler on Exrs. § 509; Welsh *v.* Welsh, 105 Mass. 229; Tuck *v.* Walker, 106 N. C. 285; Ford *v.* Exempt Fire Co., 50 Cal. 299; Frost *v.* Libby, 79 Me. 56; Craig *v.* Jennings, 31 O. St. 84; as well as a fraudulent judgment or judgment by confession, Clapp *v.* Clark, 49 Fed. Rep. 123; or a chattel mortgage or transfer of personal securities, Martin *v.* Bolton, 75 Ind. 295; or mortgages. Parker *v.* Flagg, 127 Mass. 28. And such action may be brought by a special administrator, Ford *v.* Exempt Fire Co., 50 Cal. 299; or by the public administrator, Hangen *v.* Hachemeister, 53 N. Y. Supp. 532; Southard *v.* Beaver, 72 N. Y. 424; but the action is not necessary and cannot be maintained where the deed was not delivered or recorded until after the death of the decedent. Rousseau *v.* Bleau, 131 N. Y. 177. And such a suit can only be brought by the administrator or executor when the property is necessary for the payment of the debts of the estate. Estes *v.* Howland, 15 R. I. 127; Kellogg *v.* Beeson, 58 Mich. 340; Judson *v.* Connolly, 4 La. An. 169; Andrews *v.* Doolittle, 11 Conn. 283; Johnson *v.* Jones, 79 Ind. 141; McLane *v.* Johnson, 43 Vt. 48; King *v.* Boyd, 4 Or. 326; Bonslough *v.* Bonslough, 68 Pa. St. 495; Cox *v.* Hunter, 79 Ind. 590. It has been held that the distinction between a right of action for property fraudulently conveyed by the decedent and a right of action for property of value, of which he was defrauded in his lifetime, is that in the former case if there are assets sufficient to pay the creditors of the deceased fraudulent debtor, the personal representative has no right of action as trustee for the benefit of creditors, whereas the latter action is maintainable irrespective of the amount of assets. Curry *v.* Brockway, 12 Daly 17. In California, where such suit must be brought by the personal representative on the application of creditors, a disallowed and unadjudged claim does not constitute a creditor within the meaning of the statute, nor will an order be granted allowing a creditor to sue in the administrator's name for such purposes. Ohm *v.* Superior Court, 85 Cal. 545.

In a suit by the administrator to set aside a conveyance as fraudulent the burden as to the fraud is upon him, Crittenden *v.* Basom, 46 Mich. 33; although the contrary has been held as to undue influence in a deed made by the deceased to his daughter. Paddock *v.* Pulsifer, 43 Kan. 718. And the surplus recovered after debts are paid goes back to the grantee, Woerner on Admn. § 481; Allen *v.* Ashley, 102 Mass. 262; McLean *v.* Weeks, 61 Me. 277; but the wife's dower is reinstated, although she joined in the conveyance that was set aside. Munger *v.* Perkins, 62 Wis. 499.

In like manner an administrator may file a bill in equity to enforce an express trust for creditors provided by the deed of his decedent, Craig *v.* Jennings, 31 O. St. 84; Featherstone *v.* Richardson, 68 Ga. 501; or to set aside a disposition of property by the deceased for undue influence, Lore *v.* Dierkes, 16 Abb. N. C. 47; or, in California, to quiet the title to lands of the decedent. Pennie *v.* Hildreth, 81 Cal. 127. And he may revive an action of the decedent to have his deed declared to be a mortgage (which a creditor cannot do even on the administrator's refusal). Grace *v.* Neil, 41 Ark. 165. In New York, however, a judgment creditor may file a bill to vacate a forged mortgage on the property of the decedent. National Bank of West Troy *v.* Levy, 127 N. Y. 547.

So, an administrator *de bonis non* may file a bill in equity to set aside a fraudulent conveyance by his predecessor, Duffy *v.* State, 115 Ind. 351; and after obtaining judgment against his predecessor for conversion of the assets of the estate may, without collecting the judgment from the sureties, file a bill in equity to set aside a conveyance by the administrator as land bought by him with the trust funds. Harvey *v.* State, 123 Ind. 260. So, an administrator *de bonis non* may maintain a suit to set aside a fraudulent deed made by one against whom the first administrator, as such, held a note and judgment, Shell *v.* Boyd, 32 S. C. 359; or to enforce a lien on lands given to secure a note, although the note was taken in the individual name of his predecessor. Barrus *v.* Boulbac, 2 Bush 39.

If the property is needed for debts, it is the duty of the administrator to contest the fraudulent conveyance. Wheeler *v.* Single, 62 Wis. 380; Andrew *v.* Hindeman, 71 Wis. 148; see also, *Wisconsin* (1889 An. Stats. § 3832); Matter of Hart, 60 Hun 516. In case of his neglect to do so his discharge may be refused, Matter of Hart, *ubi supra;* and he is liable to creditors for neglect to do so, Danzey *v.* Smith, 4 Tex. 411; and such a conveyance may be set up by creditors against the plea of *plene administravit.* Burckmyer *v.* Mairs, Riley 208. In Connecticut and Massachusetts, he should inventory such property if it is needed for debts, Bassett *v.* McKenna, 52 Conn. 437; and may be removed for refusal to do so on request of a creditor and offer of sufficient indemnity. Andrews *v.* Tucker, 7 Pick. 250.

In some states, however, the administrator or executor is not allowed to file a bill to set aside the conveyance of his decedent as fraudulent, but the bill must be filed by a creditor. Woerner on Admin. § 296; Davis *v.* Swanson, 54 Ala. 277; Anderson *v.* Brown, 72 Ga. 713; Blake *v.* Blake, 53 Miss. 182; Partee *v.* Matthews, Id. 140; Wilson *v.* Demander, 71 Tex. 603; Willis *v.* Smith, 65 Tex. 656. The creditor may bring such action if the property is needed for debts. German Bank *v.* Leyser, 50 Wis. 258; Burtch *v.* Elliott, 3 Ind. 99. So, to recover chattels fraudulently transferred, Burton *v.* Fainholt, 86 N. C. 260; or to set aside a fraudulent judgment entered by collusion against the deceased administrator, Spoon *v.* Smith (S. C.), 15 S. E. Rep. 800; or to set aside a fraud in which the administrator has participated. Gardner, 17 R. I. 751. In Maryland, the bill may be filed by an administrator for the creditors, Bank *v.* Hume, 3 Mackey 360; or by a single creditor, Tierney *v.* Corbett, 2 Mackey 264; but not, it seems, by an executor. Id. And a creditor may hold the fraudulent purchaser liable for the proceeds of the property sold by him. Jackson *v.* McNabb, 39 Ark. 111. But the creditor who sues to set aside such a conveyance should make the personal

representative a party, Gibbs *v.* Hodge, 65 Ala. 366; Tuck *v.* Walker, 106 N. C. 285; *North Carolina* (1882 Code, § 1446); especially if the conveyance was made to the heirs, Vestal *v.* Allen, 94 Ind. 268; although it has been held to be unnecessary to make the administrator a party, Coffey *v.* Norwood, 81 Ala. 512; or the widow and next of kin of the decedent, Holladay *v.* Holladay, 27 S. C. 622; but the grantee is, of course, a necessary party. Fraser *v.* Passage, 63 Mich. 551. Such an action may be barred by laches, and cannot be brought by a creditor after ten years, Ferry *v.* Fountain, 83 Va. 451; nor, in Indiana, by an administrator after five years. Bushnell *v.* Bushnell, 88 Ind. 403.

Parties—Co-executors. In equity in suits brought by co-executors the rule is that only those who have proved the will and qualified must be parties. Rinehart *v.* Rinehart, 2 McCart. 44; Marsh *v.* Oliver, 1 McCart. 262; Alexander *v.* Rice, 52 Mich. 451. But all co-executors taking out letters should join, although they have filed separate inventories. Matter of Slingerland, 36 Hun. 575, revg. Tracy *v.* Slingerland, 3 Dem. 1. And when letters are once issued, all the executors are co-executors, although one took letters under an original probate and the other under probate (of a foreign will) by exemplified copy from another state. Will of Coursen, 3 Gr. Ch. 408. If a co-executor who has qualified is unwilling to be made a complainant, he should be made a party defendant. Dare *v.* Allen, 1 Gr. Ch. 288. The rule that a non-qualifying executor cannot be sued at law by his co-executors who have proved the will, for assets of the estate that have come into his hands, does not prevail in equity. Marsh *v.* Oliver, 1 McCart. 259. One executor may sue his co-executor individually for an individual debt to the estate (not joining him as a complainant), Ransom *v.* Geer, 3 Stew. (N. J.) 249; or as co-executor, to compel him to give security for his administration, Martin *v.* Martin, 4 Harr (N. J.) 44; or to pay money into a specific fund as directed by the will, Evans *v.* Evans, 8 C. E. Gr. 71; and may revive an equity suit against his co-executor which was begun by the testator, McGregor *v.* McGregor, 85 N. Y. 218; or may bring suit in his individual name against his co-executor for a debt due to him from the decedent (not making himself a party defendant). Black *v.* Shreeve, 3 Halst. Ch. 440. But on a bill for settlement of the estate he cannot as administrator and heir make himself both complainant and defendant. Groves *v.* Williams, 68 Ga. 598.

Action by other parties. If the administrator colludes with a debtor of the estate to the injury of the next of kin, they may proceed in equity against the debtor. Fleming *v.* McKesson, 3 Jones Eq. 316. So, the next of kin may proceed against the decedent's surviving partner for conversion of the partnership assets, on the refusal of the administrator to sue, making the administrator and the other parties interested defendants, Ravenscraft *v.* Ravenscraft, 22 Kan. 20; although next of kin, legatees, or creditors cannot ordinarily file a bill against the decedent's surviving partner for the sole purpose of compelling him to account and settle with the personal representative. Harrison *v.* Righter, 3 Stockt. 389. So, a court of equity will entertain their suit for an accounting by a defendant, who has in his hands all the property of the estate, where there has been no administration and there are no debts and all parties interested are before the court, Hooper *v.* Holmes, 3 Stockt. 122; or a suit of a widow's sole legatee (there being no debts and no administration) for waste committed on her statutory estate during her life, De Bardelaben *v.* Stou-

denmire, 82 Ala. 574; or of the residuary legatee to enforce a vendor's lien after settlement of the executor's accounts. Bogan *v.* Hamilton, 90 Ala. 454. The heirs of the complainant are the proper persons to revive a bill for specific performance of an agreement to convey lands after decree for the complainant, and the executor and persons interested in the personal estate under the will should be made parties. Lanning *v.* Cole, 2 Halst. Ch. 102; Downing *v.* Risley, 2 McCart. 93. So, one descendant and heir, entitled to a mortgage made to the decedent and his heirs to secure a trust for the benefit of the decedent and his issue, may foreclose the mortgage without an assignment to him, making the administrator and the other issue parties. Sargent *v.* Baldwin, 60 Vt. 17.

On the other hand, the administrator of a mortgagee in possession under foreclosure is the proper complainant in a bill against an heir of the mortgagee for waste. Palmer *v.* Stevens, 11 Cush. 147. So, the administrator (and not the heirs) is the proper party to enforce a vendor's lien for the purchase moneys of lands sold by the administrator for debts. Dugger *v.* Taylor, 60 Ala. 504.

On the other hand, one surviving joint obligee may maintain an action without making the executor of the deceased obligee a party. Freeman *v.* Scofield, 1 C. E. Gr. 28. The personal representative of a *cestui que trust* is not the proper party to enforce a trust in real property by compelling a conveyance of the land. Janes *v.* Throckmorton, 57 Cal. 368. So, the executor is not the proper party to procure a sale of the lands of the decedent (which the testator had directed should not be sold except for that purpose) for the maintenance of the son, but the bill should be filed in the name of the son himself. Walker *v.* Walker, 9 Stew. (N. J.) 376.

But the living beneficiaries and representatives of those deceased may all join in an action against an executor for misappropriating real and personal property. Butler *v.* Lamson, 72 Mo. 227. So the representatives of the remainderman and the deceased life tenant may join to enforce a mortgage given by a deceased executor for the trust fund and the arrears of interest. Lauterman *v.* Lauterman, 15 Stew. (N. J.) 319. So, a surety may join with the administrator of the principal debtor to vacate a fraudulent conveyance of the deceased principal. Strong *v.* Taylor School Township, 79 Ind. 208.

Statute of Limitations. An executor who has given a mortgage on his own property to secure to an infant distributee the share that may be found due him on an accounting cannot claim a discharge of the mortgage by any lapse of time on his failure to render an account or to keep books from which a correct account could be stated. Morgan *v.* Morgan, 5 Dick. (N. J.) 473. So, where the administrator is the surviving partner of the deceased, he cannot be relieved from accounting for partnership assets by any lapse of time. Juillard *v.* Orem, 70 Md. 465. But the general Statute of Limitations will bar a bill in equity to set aside a fraudulent conveyance. Syme *v.* Riddle, 88 N. C. 463; Forde *v.* Exempt Fire Co., 50 Cal. 299; Bushnell *v.* Bushnell, 88 Ind. 403; Cook *v.* Chambers, 107 Ind. 67; Cox *v.* Hunter, 79 Ind. 590. In New York, the statute does not begin to run until after the appointment of an administrator, in favor of debtors of the estate generally, Code C. P. § 392; or of a surviving partner, Cohen *v.* Hymes, 64 Hun 54; or the purchaser of property of the estate (for unpaid purchase money). Dunning *v.* Ocean National Bank, 61 N. Y. 479.

*BOOK THE SECOND.

OF REMEDIES AGAINST EXECUTORS AND ADMINISTRATORS.

In the last place, it is proposed to treat of the Remedies against executors and administrators, by means of which their various duties and liabilities may be enforced in the Queen's Bench and Chancery Divisions of the High Court of Justice respectively.

Foreign executors.

Before entering on this subject, it may be remarked, that no suit can be brought against any executor or administrator, in his official capacity, in the court of any country but that from which he derives his authority to act by virtue of the probate or letters of administration there granted to him (*a*). Therefore, if a foreign creditor wishes a suit to be brought here, in order to reach the effects of a deceased testator or intestate situate in England, it will be necessary, before the suit can be maintained, notwithstanding an executor or administrator has been appointed abroad, that an English personal representative should also be duly constituted by grant from the Probate Court here; for the foreign executor or administrator is not liable to be sued, in his official character, in this country (*b*). But it must be observed, that if he should collect the effects or debts of the deceased found or due in England, without taking out letters of administration here, he would thereby become liable as executor *de son tort*, to the extent of the assets so received by him (*c*).

(*a*) Story's Confl. s. 513.

(*b*) Tyler *v.* Bell, 1 Keen, 826, 829. Story's Confl. ss. 513, 514. Flood *v.* Patterson, 29 Beav. 295.

(*c*) See *ante*, pp.*208,*209. But in a suit in equity, the presence of an executor *de son tort* in court will not dispense with that of a regular representative: Penny *v.* Watts, 2 Phill. Ch. C. 152. See *post*, pp.*1912,*1914.

† *Action against foreign executors.* In the United States, as in England, an action at law will not, generally, lie against a foreign executor or administrator, Croswell on Executors § 570; Redfield Surr. Prac. 416; Story Confl.

L. §§ 513, 514, b; Vermilyea *v.* Beatty, 6 Barb. 429; Metcalf *v.* Clark, 41 Barb. 45; Vaughan *v.* Northrup, 15 Pet 1; see too, Vol. II. p. 431, *ubi supra;* although he may have been served with process in the state, Security Insurance Co. *v.* Taylor, 2 Biss. 446; much less against a nonresident foreign executor by attachment. Miller *v.* Leeds, 23 Vroom 366. And he cannot be substituted as defendant in a pending suit on the death of his intestate, in the absence of a statute providing for such substitution, Matter of Webb, 11 Hun 124; nor be admitted to defend an action to quiet title to lands. Beaman *v.* Elliott, 10 Cush. 172. Even a court of equity cannot, in general, render a decree against him and enforce satisfaction out of assets in the jurisdiction. Sparks *v.* White, 7 Humph. 25. And he cannot be called to account for personal property held by him as such within the jurisdiction. Norton *v.* Palmer, 7 Cush. 523.

A foreign executor or administrator may, however, waive his right to immunity by his voluntary appearance in a pending suit. Newark Savings Institution *v.* Jones, 8 Stew. (N. J.) 407; Davis *v.* Connelly, 4 B. Mon. 136. And he may be admitted, under the Minnesota statute, to defend an action against his intestate pending at the time of his death. Brown *v.* Brown, 35 Minn. 191; 1878 G. S. c. 53, § 16. So, where a foreign representative moves into the jurisdiction without having settled his accounts in the place of his appointment, he may be sued for an accounting and for payment of legacies. Colbert *v.* Daniel, 32 Ala. 329. And if he brings assets with him from his own jurisdiction into the foreign jurisdiction, he may be held there to the extent of such assets, Campbell *v.* Tousey, 7 Cow. 64; Gulick *v.* Gulick, 33 Barb. 92; as well as the sureties on his administration bond who had also moved into the jurisdiction. Johnson *v.* Jackson, 56 Ga. 326. But assets sent to him (in a jurisdiction where he resides, but has taken no letters) from a co-administrator in a foreign jurisdiction, will be regarded as held by him as the agent of the sender. Sedgwick *v.* Ashburner, 1 Bradf. 105; see too, Campbell *v.* Sheldon, 13 Pick. 8. In Connecticut, a distinction is made between assets imported into a jurisdiction and those collected there, and as to the latter the foreign representative is held liable to action and accounting there. Hedenberg *v.* Hedenberg, 46 Conn. 30; Marcy *v.* Marcy, 32 Conn. 308. For other cases on foreign assets, see Vol. III. p. 133, *ubi supra.*

A foreign executor may be held in any jurisdiction on his own contracts and acts. Thus, a court of equity will take jurisdiction against him for the specific performance of a contract made by him as executor to assign a judgment belonging to the estate, Johnson *v.* Wallis, 112 N. Y. 230; or to restrain waste and protect the property of the estate for administration. Field *v.* Gibson, 56 How. Pr. 232.

A domestic executor or administrator cannot be sued as such in a foreign jurisdiction on a domestic judgment rendered against him, Pond *v.* Makepeace, 2 Met. 114; much less, in his own jurisdiction, on a judgment rendered in another jurisdiction against the ancillary foreign administrator, Dent *v.* Ashley, Hempst. 54; Cresswell *v.* Slack, 68 Ia. 110; King *v.* Clarke, 2 Hill (S. C.) 611; Brodie *v.* Bickley, 2 Rawle 431; unless assets be traced from the foreign administrator into the hands of the domestic administrator. Carrigan *v.* Sample, 72 Tex. 306. In general, such foreign judgment against an ancillary administrator is not conclusive against the domestic administrator, Stacy *v.* Thrasher, 6 How. 44; McGarvey *v.* Darnall, 134 Ill. 367; nor even *prima facie* evidence

of the debt; Price *v.* Mace, 47 Wis. 23; although it is admissible as evidence of the fact of a judgment having been rendered on the demand. Hill *v.* Tucker, 13 How. 458. In like manner presentment or filing of a claim in one jurisdiction does not amount to its presentment in another. McLean *v.* Meek, 18 How. 16. And a suit pending in a foreign jurisdiction (testator's domicil) to enforce a foreign will for its citizens is no bar to a similar suit in another state, where the trustee resided, and against the same trustee, for the protection of its citizens. Davis *v.* Morris, 76 Va. 21.

*CHAPTER THE FIRST.

OF REMEDIES AGAINST EXECUTORS AND ADMINISTRATORS AT LAW.†

An action of *debt* did not formerly lie against an executor or administrator upon a simple contract, when the testator or intestate could have waged his law (*a*).

No action lay at common law against an executor in which the testator could have waged his law.

But stat. 3 & 4 Wm. IV. c. 42, s. 13, abolished wager of law, and by s. 14 enacted that "an action of debt on simple contract shall be maintainable in any Court of Common Law against any executor or administrator."

No action of account lay against an executor or administrator at common law; because the account rested in the privity and knowledge of the deceased only (*b*): But this action was given by stat. 4 & 5 Ann. c. 16, s. 27.

Action of account.

An action does not lie against an executor for a general legacy (*c*) even though he may have expressly promised to pay (*d*).

No action at law lies against an executor for a general legacy:

And an action at law for a distributive share of an intestate's property cannot be maintained against the personal representative, although he may have expressly promised to pay (*e*).

*But the law is different with respect to *specific* legacies; for, after an assent by an executor to a specific legacy, he is clearly liable at law to an action by the legatee; because the interest in any specific thing bequeathed vests at

secus, as to a specific legacy after assent:

† See American note at end of this chapter.

(*a*) Barry *v.* Robinson, 1 N. R. 293.

(*b*) Co. Litt. 89, *b*. 2 Inst. 404.

(*c*) Deeks *v.* Strutt, 5 T. R. 690.

(*d*) Jones *v.* Tanner, 7 B. & C. 542.

(*e*) See *Accord.* Holland *v.* Clark, 1 Y. & C. Ch. C. 151, 167, *per* Knight Bruce, V.-C. See also Johnson *v.* Johnson, 3 B. & P. 169, where Lord Alvanley, C. J., observed that, "if an executor, thinking that he has settled the affairs of his testator, pay the legacies, I have no difficulty in saying that a Court of Common Law would not entertain an action for money had and received against a legatee, since such a Court cannot take into consideration, as a Court of Equity would do, the mode in which the funds might have been applied." See as to an action for a legacy charged on land, Braithwaite *v.* Skinner, 5 M. & W. 313.

law in the legatee, upon the assent of the executor (*f*). Therefore, a devisee of chattel leaseholds may bring an action to recover them against the executor, after an assent by him to the bequest (*g*). So an action of trover will lie for a specific legacy, after the executor has assented (*h*).

or where he has ceased to hold the money as executor:

It must also be observed, that executors may, by arrangement with the legatees, cease to hold the money bequeathed in their character of executors; in which case they are obviously liable to be sued at law; Thus, in Gregory *v.* Harman (*i*), the plaintiff and three others being residuary legatees under the will of one T. P., the defendants, as the executors named in the will, accounted with them, and having paid to the latter the respective sums due to them thereon, took from them, and from the plaintiff, a release, but did not pay the plaintiff his share, he having consented to allow it to remain in their hands. And it was held, that the money not being retained by the defendants in their character of executors the plaintiff was entitled to recover it in an action at law. Again, in Hart *v.* Minors (*j*), E. by will bequeathed, subject to debts and legacies, the residue of his personal estate to his executors, upon trust to divide the same into two equal parts, and to divide one of such parts into six equal shares, and to pay one of such shares unto each of his cousins, E. T., J. W., and J. H., and the remaining shares as therein mentioned, and appointed M. his executor, who duly proved the will: M., having taken upon himself the execution of the will, called a meeting of the residuary legatees, at which J. H. was present, and exhibited an account, charging himself with assets, and paid some of *the legatees the greater portion of their share of the residue, and was about to pay J. H., but was prevented from so doing: Another meeting was afterward called, at which J. H. was not present, when the executor exhibited another account, charging himself with assets, and crediting himself with payments and disbursements, and, amongst others, with having paid "cash for legacy duties:" To this was appended a supplemental account, containing, amongst others, the following item: "By cash retained for J. H., 179*l.* 10*s.*:" In an action for money had and received, and on an account stated, brought by J. H. against the executor to recover the amount of the legacy, it was held by the Barons

(*f*) *Ante*, p.*1231.
(*g*) Doe *v.* Guy, 3 East, 120.
(*h*) Williams *v.* Lee, 3 Atk. 223.
(*i*) 1 Moore & P. 209.
(*j*) 2 Crompt. & M. 700.

of the Exchequer, that the action was maintainable, on the ground of a certain sum having been received and retained by the defendant for the plaintiff's use, by which the defendant ceased to hold the money in his character of executor (*k*).

The jurisdiction of the County Courts is, by stat. 51 & 52 Vict. c. 43, s. 58, extended to the recovery of a demand not exceeding 50*l.*, for the amount or part of the amount of a distributive share under an intestacy, or of any legacy under a will (*l*).†

51 & 52 Vict. c. 43: legacy, &c., not exceeding 50*l.* recoverable in County Court.

Where money is bequeathed to an executor in trust, that is, where he has trusts to perform with respect to the bequest which do not form part of the ordinary duties of an executor, the case is not within section 58 (*m*), but a bequest, though made in terms to an executor in trust, will be within *the section if the executor has really nothing more to do than he would be bound to do upon a simple bequest to a legatee (*n*). And all cases involving the execution of trusts within and to the amount of 500*l.* are within the equity jurisdiction conferred on the County Courts by section 67.

It has been shown, that in the case of an action brought *by* executors, they should all join, whether they have administered or not (*o*). But the rule as to joinder was different in actions *against* executors or administrators: Therefore, where the defendant pleaded in abatement that he had one or more co-executors who ought to be joined, he must have averred, not only that the co-executor was alive (*p*), but that he had *administered;*

Parties.

(*k*) See also Gorton *v.* Dyson, 1 Brod. & Bing. 219. Moert *v.* Moessard, 1 Moore & P. 8. Rose *v.* Savory, 2 Bing. N. S. 145. Wasney *v.* Earnshaw, 4 Tyrwh. 806. Roper *v.* Holland, 3 A. & E. 99. Edwards *v.* Bates, 7 M. & Gr. 590. Bartlett *v.* Dimond, 14 M. & W. 49, 56. Pardoe *v.* Price, 16 M. & W. 459, by Rolfe, B. Bond *v.* Nurse, 10 Q. B. 244. Edwards *v.* Lowndes, 1 E. & B. 81. Topham *v.* Morecroft, 8 E. & B. 972.

(*l*) The County Court has also, by sect. 67 of the same statute, jurisdiction in administrations and execution of trusts to the extent of 500*l.*

† See American note at end of this chapter.

(*m*) Hewston *v.* Phillips, 11 Exch. 699. See further, as to what is a claim for a legacy, Longbottom *v.* Longbottom, 8 Exch. 203.

(*n*) Pears *v.* Wilson, 6 Exch. 833. See also Re Fuller, 2 E. & B. 573. The County Court may well try a question of *devastavit* in such a suit: Winch *v.* Winch, 13 C. B. 128. The grant of letters of administration is part of the cause of action: Re Fuller, 2 E.& B. 573.

(*o*) This, however, is subject to the operation of R. S. C. 1883, Ord. XVI. r. 11, *ante*, p.*1777.

(*p*) Hilbert *v.* Lewis, 1 Freem. 268. Pleas in abatement are now abolished. See *ante*, p.*1777.

because it was only necessary to sue so many of the executors as had administered (*q*).

Formerly in an action against a married woman executrix, the husband must have been joined as a defendant, but now by the Married Women's Property Act, 1882, sect. 18, a married woman who is an executrix or administratrix alone or jointly with any other person or persons may sue or be sued without her husband as if she were a *feme sole.*

If one of two executors dies, an action cannot be brought against the surviving executor and the executor of the deceased executor, but must be against the survivor alone (*r*).

By R. S. C. 1883, Ord. III. r. 4, it is provided that if *a defendant is sued in a representative capacity, the indorsement of claim must show in what capacity he is sued. And by Ord. XVI. r. 8, it is provided that trustees, executors, and administrators may be sued on behalf of, or as representing the property or estate of which they are trustees or representatives without joining any of the persons beneficially interested in the trust or estate, and shall be considered as representing such persons; but the court or a judge may, at any stage of the proceedings, order any of such persons to be made parties, either in addition to or in lieu of the previously existing parties (*s*).

There seems no reason why a plaintiff should not obtain judgment under Ord. XIV. against an executor who does not set up a defense of *plene administravit,* although an executor can of course obtain leave to defend more readily than his testator could have done. When the executor successfully sets up *plene administravit* it would seem to have been decided at Chambers that the plaintiff is entitled to a judgment with costs against future assets *quando acciderint,* but that the executor is entitled to costs of action as against the plaintiff (*t*).

Service on one of two co-executors, who are in possession of the

(*q*) Bro. Exors. 20, 88. Wentw. Off. Ex. 205, 14th edit. Swallow *v.* Emberson, 1 Lev. 161.

(*r*) 1 Roll. Abr. 928, tit. Exors. (Z). But if the executor of the executor administer with the other, an action lies against both as executors: *Ibid.* It is not necessary as a rule in an action for an account in the Chancery Division to add the representative of a deceased executor as a party, but where it is desirable to join such representative R. S. C. 1883, Ord. XVI. r. 11, or r. 48 may be applied. Re Harrison, [1891] 2 Ch. 349.

(*s*) See *ante,* p. *1778.

(*t*) See Annual Practice, 1893, p. 312.

[*1832]

premises, would seem to be a sufficient service in an action for recovery of land (*u*).

In an action against an executor, as such, he must be named executor, as it is provided by R. S. C. 1883, Ord. III. r. 4, that if the defendant or any of the defendants is sued in a representative capacity, the indorsement shall show in manner appearing by such of the forms in Appendix A. Part III. sec. VII. as shall be applicable to the case, or by any other statement to the like effect, in what capacity the defendant is sued. And this was so before the Judicature Act (*v*). Under the law as it existed prior to the Judicature Act it was settled that if, upon the whole matter, the plaintiff *had declared against the defendant as executor, it was considered that the judgment might well be *de bonis testatoris*, although the defendant was not named executor at the beginning of the declaration (*x*): Thus it was enough in an action of covenant on a demise to the testator, to state that he made his will and appointed the defendant *his executor*, who entered and was possessed *as executor;* for this averment might be traversed by the defendant (*y*).

Statement of claim.

Practice prior to Judicature Act: how defendant to be charged as executor.

Formerly a plaintiff could not have an action against a defendant to charge him as executor, and also in his own right: for the judgment in the one case was *de bonis propriis*, and in the other *de bonis testatoris* (*z*).

Joinder of counts.

But now by R. S. C. 1883, Ord. XVIII. r. 5, it is provided that "Claims by or against an executor or administrator as such may be joined with claims by or against him personally, provided the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor

(*u*) Doe *d.* Strickland *v.* Roe, 4 D. & L. 431.

(*v*) Com. Dig. Pleader (2 D. 2).

(*x*) Dean of Bristol *v.* Guyes, 1 Saund. 112, *a.* Rann *v.* Hughes, 4 Bro. P. C. 27, Toml. edit. Com. Dig. Abatement (F. 20). *Ibid.* Pleader (2 D. 2).

(*y*) Holliday *v.* Fletcher, 2 Lord Raym. 1510. S. C. 2 Stra. 781. If the plaintiff declared in the *debet* and *detinet* against an executor or administrator, in cases where he ought to have sued in the *detinet* only, the declaration was bad on demurrer; though it was aided by verdict: Fruen *v.* Porter, 1 Sid. 379. But it was held in Wilson *v.* Hobday, 4 M. & S. 120, that no objection could be made to a declaration in the *detinet*, which might, and strictly ought to have been laid in the *debet* and *detinet;* for a party might abridge his demand, though he could not extend it.

(*z*) Herrenden *v.* Palmer, Hob. 88. Hall *v.* Huffam, 2 Lev. 288.

or administrator" (*zz*). With regard to the corresponding rule of the Rules of 1875 (Ord. XVII. r. 5), Hall, V.-C., made the following observations in Padwick *v.* Scott (*a*): "In suing an executor or administrator it frequently becomes a question whether he should be sued as legal personal representative or personally; and the minds of the framers of Order XVII. Rule 5, were directed to Ashby *v.* Ashby (*b*), and *cases of the same class, where the executor or administrator has been dealing with the assets, or making contracts in the course of administration properly and fairly in his character of executor or administrator, and then it becomes a question whether, the contracts being personally entered into by him, he should be sued in his character of legal personal representative or in his personal character, being left afterward to get payment if he could out of the assets in a course of administration. The object of that clause was to get over such difficulties."

Defenses:

In an action against an executor or administrator, the defendant may plead any matter which the testator or intestate might have pleaded (*c*); and in addition thereto he may specifically deny the character in which he is sued, which was formerly done by pleading *ne unques executor or administrator;* or admitting it, he may plead that he has no assets in his hands, and that either generally, or specially, with the exception of assets to a certain amount, which are not sufficient to satisfy the plaintiff; or he may plead a retainer to pay his own debt of equal or superior degree, or debts of a superior degree due to third persons (*d*).

Plea of executor's bankruptcy:

Unless a *devastavit* is suggested, a plea by an executor or administrator of his own bankruptcy is not pleadable: as the proceedings in bankruptcy would not bind any effects, upon which, if the plaintiff obtained judgment and execution, the sheriff would have a right to levy under a *fi. fa.* (*e*).

Pleas by several executors.

If there are several executors, they may plead different pleas; and that which is most to the testator's advantage shall be received. Therefore, in an action of *assumpsit* against four executors, upon a promise made by the testator, if one executor acknowledges the action, and the other three plead *non-assumpsit,*

(*zz*) It has been held that this rule does not apply to counterclaims, Macdonald *v.* Carington, 4 C. P. D. 28.

(*a*) 2 C. D. 736, 743.

(*b*) 7 B. & C. 448. *Ante,* p.*1664.

(*c*) Com. Dig. Pleader (2 D. 8).

(*d*) Tidd, 644, 9th edit.

(*e*) See Serle *v.* Bradshaw, 2 Cr. & Mees. 148. *Ante,* p. *559.

[*1834]

their plea shall be received (*f*). Hence, *if a warrant of attorney be given by one of several executors to confess judgment against them all, the courts will order it to be delivered up (*g*). So where one executor pleaded a good plea, and the other a bad one, on demurrer, judgment was given in C. B. for both the defendants; but it was reversed on error, and a new judgment given for the plaintiff against one executor only (*h*).

Where several executors plead a release to the testator or to themselves, and one of them afterward makes default, this shall not be a total default in the defendants, so as to induce a judgment against them (*i*).

Plea of *ne unques executor, &c.*:

If the defendant intends to deny his being executor or administrator, he must plead such denial specifically (*k*); otherwise he will admit his representative character. The plea of *ne unques executor* or *ne unques administrator* is a plea in bar (*l*): But a plea to an action brought against the defendant as executor, that he was administrator and not executor, was, under the old system, a plea in abatement only (*m*), which now could be easily remedied, if necessary, by amendment. So, in an action against the defendant as administrator, a plea that he was not administrator but executor, could only be in abatement (*o*). So, if he *were sued as administrator generally, he must have pleaded in abatement that he was administrator only *durante minoritate* (*p*).

(*f*) Chaffe *v.* Kelland, 1 Roll. Abr. 929, tit. Exors. (A.), pl. 1. Wentw. Off. Ex. 212, 14th edit. Elwell *v.* Quash, 1 Stra. 20. So if two executors have judgment, and the one prays a *capias*, and the other a *fieri facias*, the *capias* shall be awarded, as best for the testator: Foster *v.* Jackson, Hob. 61, cited as the opinion of Cotismore in 7 H. 6, 6. Although the forms of pleading have been altered by the Judicature Acts, there seems to be nothing in those acts to impugn the general principles laid down in the authorities cited for the propositions under this head in the text.

(*g*) Elwell *v.* Quash, 1 Stra. 20. Tidd, 548, 9th edit.

(*h*) Baldwin *v.* Church, cited 1 Stra. 20. Demurrers are now abolished, but points of law which formerly would have been raised by demurrer can now be raised by the pleadings under Ord. XXV. r. 2. As to the costs where defendants sever in their pleadings, see Stumm *v.* Dixon, 22 Q. B. D. 99. *Ibid.* 529.

(*i*) Wentw. Off. Ex. 213, 14th edit.

(*k*) R. S. C. 1883, Ord. XIX. r. 13.

(*l*) Com. Dig. Pleader (2 D. 7).

(*m*) Pyne *v.* Woolland, 2 Vent. 178. Harding *v.* Salkill, 1 Salk. 296. Granwell *v.* Sibly, 2 Lev. 190. Com. Dig. Pleader (2 D. 3), (2 D. 7).

(*o*) Com. Dig. Abatement (F. 20). Pleader (2 D. 12). Com. Dig. Pleader (2 D. 4). Now by R. S. C. 1883, Ord. XXI. r. 20, no plea or defense shall be pleaded in abatement.

(*p*) Little *v.* Plant, 1 Lutw. 20. Com. Dig. Pleader (2 D. 12).

[*1835] [*1836]

On the trial of an issue joined on a plea of *ne unques executor* or *administrator*, the *onus* of proof is on the plaintiff, who has to prove the affirmative of the proposition.

If the fact that a party is executor is denied by the opposite party (*q*), proof that the defendant has intermeddled with the property, so as to make himself executor *de son tort* (*r*), is sufficient proof of his being executor (*s*).

It was said that the plaintiff would fail on an issue joined on a plea of *ne unques executor*, unless he could prove not only the appointment of the defendant as executor, but also that he had taken upon himself to act as such, or had proved the will. But it is laid down in a book of authority, that an executor who proves the will, though he does not otherwise administer, cannot plead *ne unques executor;* And that, if there be two executors, and one proves it in the name of both, even against the will of the other, yet he cannot plead *ne unques executor* nor administer as executor (*t*).

For the purpose of introducing formal and documentary evidence of the defendant being executor or administrator, it is always prudent, and in some cases absolutely necessary, *to give notice to the defendant to produce at the trial the probate of the will, or the letters of administration (*u*). But it is not also necessary, in order to let in secondary evidence, to prove that the probate or letters are in the defendant's possession; for if he has been duly appointed executor or administrator, they must necessarily be presumed to be in his possession (*x*). Some evidence of the identity of the party, namely, that the person, described in the documentary evidence as executor or administrator, is the party sued, will be indispensably necessary (*y*).

(*q*) Such denial must be specifically pleaded: see R. S. C. 1883, Ord. XIX. r. 13.

(*r*) As to the acts by which a person will make himself executor *de son tort*, see *ante*, p.*208 *et seq.*

(*s*) See *ante*, p. *216. The plaintiff may reply that the defendant has administered: Keble *v.* Keble, Hob. 49. Com. Dig. Pleader (2 D. 7): or that goods of the testator to a certain value came to the defendant's hands before administration granted: Kellow *v.* Westcombe, 1 Freem. 122. Hinde *v.* Skelton, 34 L. J. N. S. Ch. 378. 2 H. & M. 690. As to the proper plea by an executor who has administered under a will, which has been afterward disproved, see *ante*, p.*209, note (*l*).

(*t*) Com. Dig. Pleader (2 D. 7). See also Wentw. Off. Ex. c. 15, p. 339, 14th edit.

(*u*) 2 Phill. Ev. 346, 6th edit.

(*x*) 2 Phill. Ev. 347, 6th edit.

(*y*) 2 Phill. Ev. 347, 6th edit.

[*1837]

If the defendant, being sued as administrator, pleads, that before the date of the writ, his administration was revoked and granted to another, he ought to allege that he has fully administered all the goods in his hands, or else that he has delivered them over to the new administrator (*z*). Accordingly, if an administrator wastes the goods, and afterward administration is committed to another, yet any creditor may charge him in debt, and if he pleads the last administration committed to another, the other may reply that before the second administration committed, he had wasted the goods (*a*).

plea by administrator whose letters have been revoked:

Creditors in respect of debts which the testator or intestate contracted more than six years before the commencement of the suit used formerly to attempt to take the case out of the Statute of Limitations by basing the case on a count or counts upon oral or implied promises by the executor or administrator as such.

plea of the Statute of Limitations:

But by stat. 9 Geo. IV. c. 14, s. 1, after reciting the Statute of Limitations, 21 Jac. I. c. 16, and the Irish Act, 10 Car. I., it is enacted, that "in actions of debt, or upon the case, grounded upon any simple contract, no acknow*ledgment or promise by words only shall be deemed sufficient evidence of a new or continuing contract, whereby to take any case out of the operation of the said enactments, or either of them, or to deprive any party of the benefit thereof, unless such acknowledgment or promise shall be made or contained by or in some writing, to be signed by the party chargeable thereby (*b*); and that where there shall be two or more joint contractors, or executors or administrators of any contractor, no such joint contractor, executor or administrator, shall lose the benefit of the said enactments, or either of them, so as to be chargeable in respect or by reason only of any written acknowledgment or promise made and signed by any other or others of them; provided that nothing herein contained shall alter or take away or lessen the effect of any payment of any principal or interest made by any person whatsoever" (*c*).†

(*z*) Garter *v.* Dee, 1 Freem. 13. *Ante*, p.*506. These goods, as in the case of goods possessed by an executor *de son tort*, shall not be assets in the hands of the new administrator, until they come to his possession: *Ibid.* Keble *v.* Keble, Hob. 49.

(*a*) Packman's case, 6 Co. 18 *b*.

(*b*) Extended to writings signed by an agent under the provisions of stat. 19 & 20 Vict. c. 97, s. 13.

(*c*) In an action by an administratrix,

† See American note at end of this chapter.

[*1838]

*But it is also provided by the same section, that "in actions to be commenced against two or more such joint contractors, or executors or administrators, if it shall appear at the trial, or otherwise, that the plaintiff, though barred by either of the said recited acts, or this act, as to one or more of such joint contractors, or executors or administrators, shall nevertheless be entitled to recover against any other or others of the defendants, by virtue of a new acknowledgment or promise, or otherwise, judgment may be given and costs allowed for the plaintiff, as to such defendant or defendants, against whom he shall recover, and for the other defendant or defendants against the plaintiff."†

to which the Statute of Limitations was pleaded, it appeared that the cause of action arose more than six years before, but that within six years the defendant and the agent of the plaintiff had gone over the items of the account, and struck a balance, which the defendant promised verbally to pay: it was objected that this was within the 9 Geo. IV. c. 14: But Vaughan, B., said, "I think the plaintiff has shown a good cause of action upon the count on an account stated. She does not go upon the original debt at all. I take the statute to apply in cases where you go for the original debt, and then give some evidence of an acknowledgment to rebut the presumption raised by the Statute of Limitations, that the debt has been satisfied:" Smith *v.* Forty, 4 Carr. & P. 126. See also Ashby *v.* James, 11 M. & W. 542. *Accord.* A testator being, at the time of his death, in 1857, indebted to B. on simple contract, gave by his will his real and personal estate to his wife for life, and appointed J. and E. executors. The will was not proved for many years, but the widow took possession of all the property, and paid interest on the debt to February, 1864. In September, 1870, the will was proved, and then B. filed his bill on behalf of himself and other creditors against the widow and the executors. And it was held that the claim was barred by the Statute of Limitations, for the cause of action having accrued in the testator's lifetime, whether the will was proved or not was immaterial, and that after six years from the last acknowledgment the Statute of Limitations is a bar to a simple contract debt of a testator, although there has been no legal personal representative to sue: Boatwright *v.* Boatwright, L. R. 17 Eq. 71. And it would seem that if the remedy of a creditor against the personal estate is barred, while his remedy against the real estate has been kept alive, the real estate can be made liable, although there is no legal personal representative: *per* Jessel, M.R., *ibid.* p. 74. And in Re Hollingshead, 37 C. D. 651, it was decided that payment by a devisee for life on a simple contract debt of his testator is sufficient acknowledgment to keep the debt alive against all parties interested in remainder; the law in regard to payment of interest by a tenant for life on a simple contract debt standing on the same footing as that with respect to payment of interest on a specialty debt. See also Roddam *v.* Morley, 1 De G. & J. 1. Coope *v.* Cresswell, L. R. 2 Ch. 112, 126.

† See American note at end of this chapter.

[*1839]

With regard to the payment of principal or interest, it was held, that a payment by one of the makers of a joint and several promissory note took the case out of the statute, in the same manner as before the statute 9 Geo. IV. (*d*).

But now by the 14th section of the stat. 19 & 20 Vict. c. 97 (Mercantile Law Amendment Act), "where there shall *be two or more co-contractors or co-debtors, whether bound or liable jointly only, or jointly and severally, or executors or administrators of any contractor, no such co-contractor or co-debtor, executor or administrator shall lose the benefit of the [Statutes of Limitations], or any of them, so as to be chargeable in respect or by reason only of payment of any principal, interest, or other money by any other or others of such co-contractors or co-debtors, executors or administrators" (*e*).

(*d*) By Parke, J., in Chippendale *v.* Thurston, Mood. & M. 411. Wyatt *v.* Hodson, 8 Bing. 309. This was by reason of the proviso that the act shall not lessen the effect of any payment, &c. See also Burleigh *v.* Stott, 8 B. & C. 36. Channel *v.* Ditchburn, 5 M. & W. 494. Goddard *v.* Ingram, 3 Q. B. 839. But an acknowledgment by one only of two joint mortgagees does not entitle the mortgagor to redeem where the mortgagees have been in possession for more than twenty [now twelve] years. Richardson *v.* Younge, L. R. 10 Eq. 275. L. R. 6 Ch. 478.

(*e*) This section was held to be not retrospective: Jackson *v.* Woolley, 8 E. & B. 778, 784. "*The Mercantile Law Amendment Act*, 1856, dealt with part payment of principal and payment of interest, but only with regard to contractors and executors and administrators. The short effect of the enactment as to executors is that no executor shall 'lose the benefit of' the statute of *James*, 'so as to be chargeable in respect or by reason only of payment of any principal, interest, or other money by any other executor.' . . . It was said that the payment of interest by one executor affected him only, and did not in any way affect his co-executor, and the argument was pushed to the extreme length of saying that the payment involved the executor who made it in a personal liability to pay the debt. Therefore it was urged that where one of two executors having assets in his hand applies those assets, so far as they extend, in payment of interest on a simple contract debt, the result is that after the lapse of six years from the testator's death not only is the co-executor absolved, but the testator's personal estate, whether in the hands of the co-executor or outstanding, is exempted from all liability to pay the debt, and that the creditor's sole remedy is against the executor personally who made the payment. This argument was founded on the language of the 14th section of the *Mercantile Law Amendment Act*, but it appears to me that the full effect may be given to every word in that enactment without producing so extraordinary a result. Some reasonable interpretation may be put on the words 'so as to be chargeable' which would stop short of such a conclusion; as, for instance, by hold-

[*1840]

*But independently of this enactment where an action is brought against the executor of a deceased contractor, a payment by a surviving joint contractor, made *after the death of the testator*, will not take the case out of the Statute of Limitations: Thus, in Atkins *v.* Tredgold (*f*), A. and B. made a joint and several promissory note: A. died, and ten years after his death B. paid interest upon the note: In an action brought upon the note against the executor of A., it was held that the payment of interest by B. did not take the case out of the Statute of Limitations, so as to make A.'s executors liable. Nor will it make any difference that the surviving joint contractor is the executor of the deceased: for it is clear that acts done by a surviving partner, who is executor of the deceased partner, and which the surviving partner was in that character bound to do, cannot *prima facie*, be considered to have been done in the character of executor (*g*). Again, where a joint contract is severed by the death of one of the contractors, nothing can be done by the personal representative of the deceased to take the case out of the statute as against the survivor (*h*). Therefore, in Slater *v.* Lawson (*i*), it was holden, that after the death of one maker of a joint and several promissory note, signed by two, a payment upon it by the executor of the deceased party would not take the debt out of the Statute of Limitations as against the survivor.

In Douglas *v.* Forrest (*k*), an action was brought against an executor on a Scotch judgment recovered against his testator: The defendant after pleading the general issue, pleaded, that the plaintiff's cause of action did not accrue *within six years before the commencement of the suit: To this there was a replication, that the de-

ing that the co-executor who has not paid is not to be personally chargeable as for a *devastavit* in paying over to beneficiaries assets which have come to his hands. But I dissent altogether from the proposition that the executor by whom the payment is made is thereby involved in any personal liability. The promise to pay the debt arising from the payment of interest, whether such promise is an inference of fact or an implication of law, is a promise to pay as executor, that is, out of the personal assets of the testator. The inference or implication must be consistent with the facts from which it is drawn or raised, and it would be wholly inconsistent with the facts to hold that in such a case as that supposed the executor had incurred any personal liability:" *per* Chitty, J., Re Hollingshead, 37 C. D. 651, 657.

(*f*) 2 B. & C. 23.

(*g*) Way *v.* Bassett, 5 Hare, 55. Brown *v.* Gordon, 16 Beav. 302. But see Braithwaite *v.* Britain, 1 Keen, 206. Griffin *v.* Ashley, 2 C. & K. 139.

(*h*) 1 B. & Ad. 398.

(*i*) 1 B. & Ad. 396.

(*k*) 4 Bing. 686.

ceased, at the time the action accrued, was beyond seas, and remained there till he died, and that the plaintiff sued out his writ against the defendant within six years after he first took on himself the burthen and execution of the will: And it was holden, that this replication was a good answer to the plea, the court being of opinion, that although the injury of which the plaintiff complained had existed more than six years, yet he had no "cause of action," until there was some person within the realm against whom the action could be brought; and that, as the deceased never was in England after the cause of action accrued against him, there was no person in England against whom the plaintiff could proceed, until the defendant took upon him the execution of the will (*l*).

*But it is no answer to a plea of the Statute of Limitations, that, after the cause of action accrued, and after the statute had begun to run, the debtor, within the six years, died, and that (by reason of litigation as to the right to probate) an executor of his will was not appointed, until after the expiration of the six years, and that the plaintiff sued such executor within a reasonable time after probate granted: For, as soon as there is a cause of action, a plaintiff that can sue and a defendant that can be sued from that time the date of

(*l*) See also Story *v.* Fry, 1 Y. & Coll. Ch. C. 603. *Accord.* It must be observed, that it seems to have been the better opinion, that even before the statute of *Anne* the exception in the statute 21 Jac. I. c. 16, in favor of persons being beyond sea, extends only to the case where the *creditors* or *plaintiffs* were so absent, and not where the *debtors* or *defendants* were; because *creditors* are only mentioned in the statute: Hall *v.* Wyborn, 1 Show. 99. 2 Saund. 121, *b.* note (4). And now by the statute 4 Ann. c. 16, s. 19, it is enacted, that if any person *against whom* any action lies for seamen's wages, trespass, detinu, trover, replevin, action of account, or upon the case (or other actions mentioned in 21 Jac. I. c. 16, s. 3), was beyond sea at the time that such action accrued, the *plaintiff* shall be at liberty to bring his action against him within the same time after his return as is limited for such action by the statute of 21 Jac. I. c. 16, and 4 Ann. c. 16. The latter statute, however, does not appear to have been relied on either by the counsel or court, in the above case of Douglas *v.* Forrest. But the decision is stated by Lord Denman in delivering the judgment of the Court of Exchequer Chamber, in Rhodes *v.* Smethurst, 6 M. & W. 353, to have proceeded on the equity of that statute. See further, as to the construction of the statute of Anne, Towns *v.* Mead, 16 C. B. 123. Absence beyond seas of the plaintiff or one of the plaintiffs is no longer a disability, and the period of limitation will run as to joint debtors within the jurisdiction, though some be without it: 19 & 20 Vict. c. 97, ss. 10, 11. See *ante*, p.*1792, note (*ss*). Section 10 is not retrospective: Pardo *v.* Bingham, L. R. 4 Ch. 735.

six years begins to run; and when the statute once begins to run, it must continue to run (*m*).

A writ of summons remains in force under R. S. C. 1883, Ord. VIII. r. 1, for twelve months, and may with leave be renewed from time to time for six months, and when so renewed will prevent the cause of action being barred under the Statute of Limitations from the date of the issuing of the original writ; but Malins, V.-C., under the corresponding section (s. 11) of the Common Law Procedure Act, 1852, held where a writ was issued in the Common Pleas against an administrator for a debt not then barred by statute, and within six months after the issuing of the writ (which was never served), at which time the debt was barred unless saved by the writ, the creditor took out an administration summons, that the writ only saved the bar for six months in the Court of Common Pleas, and that the statute was a bar to the administration suit (*mm*).

Statute of Limitations may be pleaded by trustees.

By 51 & 52 Vict. c. 59, in which act the term "trustee" shall be deemed to include an executor or administrator (*n*), it is provided as follows:—

Sect. 8 (1) (*nn*). In any action or other proceeding against *a trustee or any person claiming through him, except where the claim is founded upon any fraud or fraudulent breach of trust to which the trustee was party or privy, or is to recover trust property, or the proceeds thereof still retained by the trustee, or previously received by the trustee and converted to his use, the following provisions shall apply:—

(a) All rights and privileges conferred by any statute of limitations shall be enjoyed in the like manner and to the like extent as they would have been enjoyed in such action or other proceeding if the trustee or person claiming through him had not been a trustee or person claiming through him:

(b) If the action or other proceeding is brought to recover money or other property, and is one to which no existing stat-

(*m*) Rhodes *v.* Smethurst, 4 M. & W. 42, affirmed in the Excheq. Chamber, 6 M. & W. 351. Freake *v.* Cranefeldt, 3 My. & Cr. 499. As to the remedy of a creditor where there is no personal representative, see Webster *v.* Webster, 10 Ves. 93. Re Lovett, 3 C. D. 198, and the cases there cited.

(*mm*) Manby *v.* Manby, 3 C. D. 101.

(*n*) Sect. 1, sub-sect. 3.

(*nn*) This section is again referred to when the subject of Remedies against Executors in Equity is dealt with, *post*, p. *1928.

[*1844]

ute of limitations applies, the trustee or person claiming through him shall be entitled to the benefit of and be at liberty to plead the lapse of time as a bar to such action or other proceeding in the like manner and to the like extent as if the claim had been against him in an action of debt for money had and received, but so nevertheless that the statute shall run against a married woman entitled in possession for her separate use, whether with or without a restraint upon anticipation, but shall not begin to run against any beneficiary unless and until the interest of such beneficiary shall be an interest in possession.

Although, where the plaintiff died, a writ by journeys accounts could not be brought by his executor (*o*), yet if a *defendant* died, the plaintiff might pursue this writ against the personal representative, provided the action was of a nature such as would survive against an executor or administrator (*p*): and in such case, if the defendant pleaded the *Statute of Limitations, the plaintiff might reply a writ newly brought by journeys accounts (*q*); and the executor of an executor must have pleaded that he had fully administered on the day of the first writ purchased (*r*). So if the plaintiff commenced an action against the deceased within six years of the accruing of the cause of action, and such action abated by his death, a reasonable time was allowed to the executor for bringing a fresh action either according to the principle of the old writ by journeys accounts, or according to an equitable construction of the 4th section of the statute (*s*). A year has been said to be a reasonable time, but the executor, if he use due diligence, is not bound to bring the action within a year from the death of the deceased, *e.g.*, if the defendant has made it impossible to do so by delaying to take out administration (*t*). The same equitable construction has been applied to the limitation of actions on bonds, &c., imposed by the statute 3 & 4 Wm. IV. c. 42, s. 3 (*u*).

(*o*) See *ante*, p. *1787, note (*f*), for an account of this writ.

(*p*) Kinsey *v.* Heyward, 1 Lord Raym. 432. But there is some conflict between the authorities on this point. See the judgment of Lord Lyndhurst, in Davies *v.* Lowndes, 6 M. & Gr. 534. 1 Phill. Ch. C. 340.

(*q*) Kinsey *v.* Heyward, 1 Lord Raym. 432. Com. Dig. Abatement (P.).

(*r*) Spencer's case, 6 Co. 10, *b*. Doct. Plac. Exors. 2, p. 170, edit. 1677.

(*s*) See *ante*, pp. *1788, *1789.

(*t*) Curlewis *v.* Lord Mornington, 7 E. & B. 283. S.C. in error, 27 L. J. Q. B. 489.

(*u*) Sturgis *v.* Darell, 4 H. & N. 622. S. C. in error, 6 H. & N. 120.

[*1845]

Notwithstanding the fact that actions no longer abate by death (*x*) it is still open to a plaintiff where the defendant dies to bring a new action against the executors within a year from probate and thus to take the case out of the Statute of Limitations. Thus in Swindell *v.* Bulkeley (*y*), a writ was issued, but before service the defendant died. Within a year from probate of the will a fresh writ was issued against the executors for the same cause of action, but in the meantime the six years had expired. It was held that the Statute of Limitations afforded no defense to the action. An alternative procedure is to apply under R. S. C. 1883, Ord. XVII. r. 2, to add the executors as parties (*z*).

Plea of set-off:

*A defendant sued as executor or administrator, cannot set off a debt due to himself personally,† nor, if sued for his own debt, can he set off what is due to him as executor or administrator: because the debts sued for and intended to be set off must be mutual, and due in the same right (*a*). But it has been held that to a declaration in debt or assumpsit against an executor, on an account stated by him *as executor*, a set-off for debts

(*x*) R. S. C. 1883, Ord. XVII. r. 1.

(*y*) 18 Q. B. D. 250.

(*z*) See also r. 4 of the same order, which provides for carrying on the proceedings between the continuing parties and the new parties.

† See American note at end of this chapter.

(*a*) Bishop *v.* Church, 3 Atk. 691. Gale *v.* Luttrell, 1 Y. & Jerv. 180. In Bailey *v.* Finch, L. R. 7 Q. B. 34, the trustee in bankruptcy of certain bankers brought an action against the defendant for the amount of his overdraft. A., a customer of the bank, died, leaving the defendant her executor, and the balance of her account, which was in credit, had been, before action, transferred to the account of the defendant, "executor of the late Mrs. A." The defendant was residuary legatee, and it was shown that there would be, after satisfying legacies not then provided for, a surplus coming to the defendant exceeding the amount to the credit of the executorship account. It was held that the defendant could set off the amount standing to the credit of the executorship account, the ground of the decision being, not that there was an equitable right of set-off, but that in this state of accounts there was a legal right of set-off, which was not precluded in equity by any beneficial rights of third persons for whom the defendant could be deemed to be trustee. *Ex parte* Morier, 12 C. D. 491. Set-off is now governed by R. S. C. 1883, Ord. XIX. r. 3, as to which, and as to set-off against an executor, see *ante*, p. *1780 *et seq.* An administrator is entitled to set off against the share of one of the next of kin the whole of a debt due from him to the intestate's estate, part of which debt has become barred by the Statute of Limitations: Re Cordwell's Estate, L. R. 20 Eq. 644.

[*1846]

due from the plaintiff to the testator may well be pleaded; for that an account stated by an executor as such must be taken to show a debt due from his testator to the plaintiff (*b*).

*If the executor or administrator has not assets to satisfy the debt, upon which an action is brought against him, he must take care to plead *plene administravit* or *plene administravit præter*, &c. (*c*).† For it was said prior to the Judicature Acts that a judgment against an executor or administrator, whether by default or on demurrer (*d*), or upon verdict upon any plea pleaded by the executor or administrator, except *plene administravit*, or admitting assets to such a sum and *riens ultra* (*e*), was conclusive upon him that he had assets to satisfy such judgment (*f*). But that if the executor pleaded either a general or special *plene administravit*, he was liable only to the amount of assets proved to be in his hands; and a judgment against an executor, on a verdict upon *plene administravit*, was only an admission of assets to the extent of assets proved to be in his hands (*g*). And the substance of these propositions would still seem to be true, as showing the onus of pleading even under the Judicature Acts.

plea of *plene administravit*:

The essential part of the plea of *plene administravit* was, that "the said defendant has no goods, which were of the said A. B. (the testator), at the time of his death in the hands of the said defendant, as executor, to be administered, *or had, at the time of the commencement*

(*b*) Blakesley *v.* Smallwood, 8 Q. B. 538. But it may be argued that the debt, *on which the action is founded*, is the debt which arises, after the death of the testator, on the account stated between the executor and the plaintiff; and that, therefore, in truth, this case, as well as Mardall *v.* Thellusson, 18 Q. B. 857, 6 E. & B. 976, was overruled by Rees *v.* Watts, 11 Exch. 410. Newell *v.* Nat. Prov. Bank of England, 1 C. P. D. 496. *Ante*, p. *1781, note (*h*). See also Re Gregson, 36 C. D. 223. In Mardall *v.* Thellusson, the defendants were sued as executors for a debt which accrued due from their testator in his lifetime, and it was held that they might set off a debt which had accrued due from the plaintiff to them as executors since the death of their testator.

(*c*) For forms of these pleadings, see Bullen & Leake, 4th edit. vol. ii. pp. 179 *et seq.*

† See American note at end of this chapter.

(*d*) Rock *v.* Leighton, 1 Salk. 310. S. P. admitted 3 T. R. 686. Leonard *v.* Simpson, 2 Bing. N. C. 176.

(*e*) Ramsden *v.* Jackson, 1 Atk. 292. Erving *v.* Peters, 3 T. R. 685.

(*f*) 1 Saund. 219, *b.* note to Wheatley *v.* Lane.

(*g*) 1 Saund. 219, *b.* note. Cousins *v.* Paddon, 2 Cr. M. & R. 558, *per* Parke, B. Re Higgins' Trusts, 2 Giff. 562.

of the suit, or ever since": and the omission of any of the above averments was always held fatal on demurrer, as well in a general as a special *plene administravit.*

Under the old pleading rules there was a great deal of discussion (*h*) as to whether the words "*or ever since*" were *essential to the plea of *plene administravit*, and whether the judgment of assets *quando acciderint* would embrace assets received between writ and judgment, and it seems ultimately to have been decided that the words were not essential, and that the judgment of assets *quando acciderint* embraced all assets received after writ. All this seems immaterial since the Judicature Acts, except in so far as it shows, on the one hand, that if a defendant executor wishes to rely upon a payment of a creditor, since writ issued, as a *pro tanto* discharge under the rule in equity, he would have to specifically allege the fact in his defense, as was done in Vibart *v.* Coles (*i*), and not rely on a general statement that the defendant had fully administered the estate, and that there were no assets for the payment of the plaintiff's debt: and, on the other hand, that if a plaintiff wishes to rely on the receipt of assets after writ he should allege such receipt in his reply to the defense of *plene administravit* (*j*). The importance of these matters is, however, largely diminished by the power of amendment under the Judicature Act, but these amendments sometimes involve adjournment and payment of costs.

Again, in an action brought against the executor of an executor, it was not sufficient to plead that the defendant had not any goods or chattels of the original testator in his hands to be administered; but he must also plead, either that the first executor fully administered, or that he the said defendant had no assets of the first executor out of which he could satisfy any *devastavit* committed by the first executor (*k*). And such matters would seem to be essential to the substance of the defense.

plene administravit præter.

Again, an executor was *bound* to plead a debt of a higher nature, of which he had notice, in bar of an action brought against him for a debt of an inferior nature, and *riens ultra*, if he had not assets for both: otherwise it would be an admission of assets to satisfy both debts (*l*). Thus the executor was

(*h*) See Wms. Exors. 8th edit. pp. 1964, 1992.

(*i*) 24 Q. B. D. 364.

(*j*) See *post*, p.*1850, note (*t*).

(*k*) Wells *v.* Fydell, 10 East, 315.

(*l*) Rock *v.* Leighton, 1 Salk. 310. *Ante*, p.*879.

*bound to plead a judgment recovered against the testator, in bar of an action on a bond; otherwise he would admit that he had assets to satisfy the judgment (*m*).

It will be remembered that since 32 & 33 Vict. c. 46 specialty debts have not, in the administration of the estate of any person dying on or after January 1st, 1870, any priority, but a plea or defense such as that in the text will still be necessary in some cases, *e.g.*, in the case of an outstanding judgment (*n*).

If the judgment pleaded was recovered against the testator and another, the plea had to aver the survivorship of the testator (*o*).

An unregistered judgment obtained against the executor himself before administration decree has priority over all debts of equal degree, and under 32 & 33 Vict. c. 46, specialty and simple contract debts are of the same degree (*p*).

A recovery against one of several executors or administrators, and no assets *ultra*, may be pleaded in an action against all the executors or administrators for another debt of the testator or intestate (*q*).

It may be observed, that a plea of judgment recovered against the executor himself, and no assets *ultra*, is a plea in bar of the action generally, and not with an *ulterius manutenere non debet*, even where the judgment has been confessed after action brought, and pleaded *puis darrein continuance;* contrary, apparently, to the general rule, that a matter of defense, arising after action brought, cannot be properly pleaded in bar of the action generally, but must be pleaded in bar of the further maintenance of the suit (*s*). *But this arises from the peculiar nature of the action, which is brought against the executor, not only on the foundation of a debt due from the testator to the plaintiff, but in respect also of assets, supposed to be in his, the executor's, hands, liable to its satisfaction; and the executor has by law a power of confessing a judgment to another creditor in preference to the plaintiff, in the suit first brought, and thereby, to the extent of the assets then in hand, to create a perpetual bar to the plaintiff's suit, the same being pleaded in the usual way, *viz.*, that he has not assets except so much, which are not

(*m*) Earle *v.* Hinton, 2 Stra. 732.

(*n*) See *ante*, Pt. III. Bk. II. Ch. II. And note that an unregistered judgment ranks only as a simple contract debt: Van Gheluive *v.* Nerinckx, 21 C. D. 189. *Ante*, p. *862.

(*o*) Trethewy *v.* Ackland, 2 Saund. 50.

(*p*) Re Williams' Estate, L. R. 15 Eq. 270. Re Stubbs' Estate, 8 C. D. 154.

(*q*) Further *v.* Further, Cro. Eliz. 471.

(*s*) Le Bret *v.* Papillon, 4 East, 502.

sufficient to satisfy that judgment. But the plaintiff may, and constantly does, avoid the effect of the plea as an absolute bar, and protect himself from costs at the same time, on the ground of his original right of suit, by praying judgment of such assets as should come to the executor's hands, after satisfying the judgment so confessed. So that the plea of judgment recovered against the defendant as executor, pending the writ, enures in point of effect, if the judgment itself be not questioned by the replication, as only a plea in bar of the further maintenance of the suit against the executor in respect of his present assets (*t*).

Plea of retainer: for debt due from testator to executor;

*The nature and extent of the right of an executor or administrator to retain a debt due to him from the deceased, have been investigated in a previous part of this treatise (*u*). It was held to be optional in the executor or administrator either to *plead* a retainer for such a debt, or to give it *in evidence* under a plea of *plene administravit* (*x*). So

(*t*) Le Bret *v.* Papillon, 4 East, 508. Matters arising pending action may be pleaded by way of defense under the provisions of R. S. C. 1883, Ord. XXIV., and inasmuch as an executor or administrator may prefer one creditor to another, the payment of one creditor, after an action has been commenced by another, may be set up in answer to such action. Thus in Vibart *v.* Coles, 24 Q. B. D. 364, following Re Radcliffe, 7 C. D. 733, the defendant, an administratrix, after action brought against her for money lent to the intestate by the plaintiff, consented to a judge's order for judgment in a subsequent action by another creditor for a debt due from the intestate, and, judgment being signed accordingly, she paid the amount of the debt, and thereby exhausted the assets, and it was held that she was entitled to make such payment, and thereby defeat the plaintiff.

There was formerly a conflict between the rules of common law and equity on this point, the common law holding that an executor or administrator, though he could confess judgment, could not, and equity that he could, pay one creditor before another; but since the Judicature Act, 1873, s. 25, sub-s. 11, the equity rule prevails: *ibid.* Whether or not such a defense requires to be pleaded as a matter arising after action brought or after the expiry of the time limited for defense under Ord. XXIV., does not seem ever to have been decided. If it is necessary so to plead it, and the defendant cannot merely give in evidence under a plea of *plene administravit* the fact that since action brought he has paid a creditor other than the plaintiff, and thus exhausted the assets, the plaintiff, according to the words of the rule, would be entitled to confess the defense and sign judgment for his costs, unless he elected to take a judgment of assets *quando acciderint.*

(*u*) *Ante*, p.*884 *et seq.*

(*x*) 1 Saund. 333, note (6). Having regard to the terms of R. S. C. 1883, Ord. XIX. r. 4, it would seem prudent in every case to allege the facts upon which any retainer, which it is sought to set up, is based.

he might either plead, or show in evidence under that plea, that he retained assets to a certain amount, for the expenses of the funeral (*y*), or of taking out administration (*z*), or to reimburse himself for payments made out of his own pocket, in discharge of debts not inferior in their kind to the debt of the plaintiff before the commencement of the suit (*a*). But a retainer for unsatisfied debts of the testator or intestate, of a higher degree than that on which the action is brought, must be pleaded (*b*).

for disbursements by executor;

for debts outstanding.

Where an executor pleaded that he had no assets *ultra* a judgment, which, in truth, was recovered against him upon an unjust or fictitious debt, the plaintiff might reply, that the judgment was had and obtained by fraud and covin between the executor and the creditor (*c*). But the plaintiff could not traverse the averment that the debt, for which the judgment was had, was a just and true debt (*d*).

Replication to a plea of *plene administravit præter.*

*So the plaintiff might reply that the judgment is kept on foot by covin to defraud the creditors, *viz.*, "that the said defendant defers procuring acknowledgment of satisfaction to be entered of the said debt and damages, so recovered, &c., with intent to defraud him the said plaintiff:" As where the executor compounded for a less sum and did not procure the judgment to be discharged, but pleaded it to an action brought against him by another creditor, he might reply the composition, and that the judgment was kept on foot by covin: for nothing shall be allowed to the executor but what he actually pays (*e*).

The executor, in his rejoinder to replications of this description, was bound to traverse the fraud. And the plaintiff might, upon this issue, give in evidence, either that the debt was not a just one, or that less was due than the sum for which judgment had been given (*f*).

In answer to the latter evidence, which is *prima facie* proof of fraud,

(*y*) See R. *v.* Wade, 5 Price, 621, as to the form of such a plea.

(*z*) Gillies *v.* Smither, 2 Stark. N. P. C. 528.

(*a*) Co. Lit. 283, *a.* Bull. N. P. 140.

(*b*) Bull. N. P. 141. Specialty debts have now no priority. See *ante*, p.*869.

(*c*) Williams *v.* Fowler, 1 Stra. 410. 2 Saund. 50, note (3).

(*d*) Robinson *v.* Corbett, 1 Lutw. 662, by Powell, J. 2 Saund. 50, note (3). Indeed, it was not necessary for an executor who pleaded an outstanding judgment, to aver that the debt, upon which the judgment was obtained, was a just and true debt: 1 Saund. 329, note (3).

(*e*) 1 Saund. 334, note (9).

(*f*) 2 Saund. 50, note (3).

[*1852]

the defendant might show that the judgment was entered for more than was due, by mistake (*g*). If a judgment was pleaded, and *per fraudem* replied, upon which issue was taken, and it appeared in evidence that the creditor was willing to take less than was recovered, it was proof of fraud; but if it were shown that the administrator had not assets to pay that sum, it was no fraud (*h*). It should be observed, that where a judgment was obtained against an executor by covin, but for a just debt, the creditor could not avoid the judgment by alleging that it was obtained by covin to defraud him (*i*).

Evidence for plaintiff upon issue joined on plea of *plene administravit.*

*If an executor or administrator pleads *plene administravit* and the plaintiff replies that the defendant had assets at the commencement of the suit, whereupon issue is joined, the burthen of proof lies upon the plaintiff, who must prove that assets existed, or ought to have existed, in the hands of the defendant at the time of the writ sued out (*k*). The question, as to what shall be considered assets come to the hands of the executor or administrator, has been already discussed (*l*).

The plaintiff could not have proved, under this issue, that assets have been received subsequently to the commencement of the suit; to be admitted to such proof, he should have replied this matter specially (*m*).

If, upon the issue of *plene administravit*, it shall appear that the executor or administrator has been guilty of a *devastavit*, which has caused a failure of assets, the jury must find that the defendant has assets to that amount, and not find a *devastavit* (*n*).

(*g*) Pease *v.* Naylor, 5 T. R. 80.

(*h*) *Per curiam*, in Parker *v.* Atfield, 1 Salk. 312.

(*i*) Veale *v.* Gatesdon, W. Jones. 92, 3rd Resolution. Williams *v.* Fowler, 1 Stra. 410. 1 Saund. 334, note (9).

(*k*) Mara *v.* Quin, 6 T. R. 10. Webster *v.* Blackman, 2 Fost. & F. 490.

(*l*) *Ante*, p.*1534 *et seq.* In Britton *v.* Jones, 3 Bing. N. C. 676, upon a plea of *plene administravit* and replication of assets in hand at the time of the commencement of the suit, it appeared at the trial, that the testator, twelve months before his decease, purchased twelve mahogany chairs, which were seen in the house where he lived shortly before his death: The defendant proved that the deceased died poor, that he lodged in the same house with his mother and his sister, the defendant; and that money was borrowed to bury him: It was contended that, as it had not been proved that the furniture in question ever came to the hands of the defendant, there was no evidence to charge her with it as assets: but the Court of C. P. held that there was a *prima facie* case for that purpose. See also Stroud *v.* Dandridge, 1 Car. & K. 445.

(*m*) Mara *v.* Quin, 6 T. R. 11. 2 Phill. Ev. 347, 6th edit. Roscoe, Nisi Prius Evidence, 16th edit., 1218.

(*n*) Wentw. Off. Ex. c. 13, p. 312, 14th edit. This finding by the jury of assets

*In order to prove assets, the plaintiff may give in evidence the inventory exhibited by the defendant in the Court of Probate: And after the inventory is put in, it is for the defendant to discharge himself of the items (*o*).

Proof of assets by production of inventory.

In Shelly's case (*p*), Lord Holt said, that all sperate debts mentioned in the inventory shall be counted assets in the executor's hands; for that is as much as to say that they may be had for demanding, unless the demand or refusal be proved. Again, in Smith *v.* Davies (*q*), Lord Hardwicke held, that if in the inventory produced the article concerning debts does not distinguish between sperate and desperate, it will be sufficient to charge the executor with the whole *prima facie* as assets, and put upon him to prove any of them desperate; as if the article were, "Item, for debts due and owing, which I admit myself to be charged with when recovered or received" (*r*). And the authority of these cases appears to have been recognized and acted upon in the Common Pleas, in a case in the time of Dallas, C. J. (*s*). But in Gyles *v.* Dyson (*t*), where on the trial of an issue joined on a plea of *plene administravit*, it was contended, on the authority of Smith *v.* Davies, that certain debts which the defendant had, in an inventory exhibited in the Ecclesiastical Court, allowed to be due to the estate and which he did not represent to be desperate, were to be considered as actual assets in his hands, Lord Ellenborough said, "You must prove, presumptively at least, that these debts have been paid; that presumption may depend on the time and a number of other circumstances; but upon the plea of *plene administravit*, it is necessary to prove that effects *came into the hands of the defendant; this is the universal practice" (*u*).

The inventory would seem to be only *prima facie* evidence and it may be doubtful whether an inventory made or exhibited by one

in the hands of the executor is not against truth, though they be wasted, and so not to be had in kind; for the executor had them in right, since he has not rightfully parted from them; according to the rule, *pro possessore habetur qui dolo aut injuria desiit possidere: Ibid.* See Reeves *v.* Ward, 2 Bing. N. C. 235. S. C. 2 Scott, 296.

(*o*) Giles *v.* Dyson, 1 Stark. N. P. C. 32.

(*p*) 1 Salk. 296.

(*q*) Bull. N. P. 140. S. C. Selwyn's N. P. 779, note, 6th edit.

(*r*) The defendant proved, by a witness, who went to demand several of them, that he could not recover them, and accordingly they were allowed as desperate: Selw. *ubi supra.*

(*s*) Young *v.* Cawdrey, 8 Taunt. 734. S. C. *nomine* Young *v.* Cordery, 3 B. Moore, 69.

(*t*) 1 Stark. N. P. C. 32.

(*u*) See *ante*, p. *1536.

[*1854] [*1855]

Inventory only *prima facie* evidence.

executor or administrator would be even *prima facie* evidence against another (*x*).

Amount of probate stamp admissible in evidence.

The amount of the probate stamp is *admissible* in evidence, on the issue joined on a plea of *plene administravit* (*y*). And the Court of King's Bench, in Foster *v.* Blakelock (*z*), held that the probate stamp was *prima facie* evidence that the executor had assets to the amount covered by the stamp (*a*). But this decision, it should seem, must now be considered as overruled. In the case of Stearn *v.* Mills (*aa*), Littledale, J., and Parke, J., expressed their dissent from it: And in the subsequent case of Mann *v.* Lang (*b*), Littledale, J., said, that he could not say that the stamp on the probate was not admissible; but it was not *prima facie* evidence of the amount of assets: In the same case Lord Denman expressed his opinion, that if there be evidence of a long acquiescence by the executor, without redemanding any of the duty, it is *prima facie* evidence of such amount; though it is not of itself evidence of such amount: But Paterson, J., was of opinion, that it is not such *prima facie* evidence, even if a long acquiescence is shown. This subject was again considered in the Court of Chancery, in the case of Lazonby *v.* Rawson (*c*), where Lord Cranworth, C., in giving judgment, said, "The circumstance of an executor having paid probate duty up to a particular amount, may be *prima facie* evidence of his having thought that the testator had died possessed of *property represented by the amount of the stamp duty paid: But the probate duty is, in the first instance, payable on the whole of the personal estate left by the testator: If it cannot all be got in, and it should be ascertained that it was not of the value represented, in such a case provision is made for enabling the executor to get a return of the amount overpaid: Where, therefore, an executor has not made any application for the return of the duty which he may have paid in excess, it is a step in evidence toward proving an admission of assets to the amount, though by no means conclusive evidence that the executor had made a correct estimate of the testator's property.

(*x*) Stearn *v.* Mills, 4 B. & Ad. 657. The same would probably be true of the account of the personal estate to be delivered pursuant to 43 Vict. c. 14, s. 10.

(*y*) Mann *v.* Lang, 3 Ad. & E. 699.

(*z*) 5 B. & C. 328.

(*a*) See also Curtis *v.* Hunt, 1 C. & P. 180, where Lord Tenterden ruled to the same effect.

(*aa*) 4 B. & Ad. 657.

(*b*) 3 Ad. & E. 699.

(*c*) 4 De G. M. & G. 556.

[*1856]

Much might depend on the amount overpaid, and the pecuniary condition in life of the executor, whether he would be at the trouble of getting a return of the excess of duty overpaid. Here the executor paid 40*l.* in respect of probate duty, and never got back any of it, and I think it certainly amounts to strong presumptive evidence that he had received assets to the extent covered by that amount of duty; but it is not an absolute admission that he did."

An admission by the defendant, that a debt is a just debt, or a promise to pay it as soon as he can, is not evidence to charge him with assets: for such an admission must be understood with a reasonable intendment, and the executor could not mean to pledge himself to commit a *devastavit*, by paying this debt before others of a higher nature (*d*). But if an executor compound with the creditors, and afterward, at the suit of any of them, plead *plene administravit*, proof of the composition would be conclusive proof of assets, and the court would not suffer him to give evidence of no assets (*e*). However, an executor will not admit assets by *paying interest on a bond due from the testator (*f*): for it would be unreasonable that he should be liable for the whole debt, by paying a part out of his own funds, or that, because he has enough in his hands to pay the interest, he should be thereby concluded from disputing assets for the principal (*g*).

evidence for executor that the assets have been exhausted.

In answer to the proof of assets, the executor or administrator may show under the issue joined on *plene administravit* (*h*), that he has exhausted the assets, by discharging other demands on the estate, not inferior in their nature to that of the plaintiff (*i*), or even by the payment of debts of inferior degree, without notice of the plaintiff's demand (*k*). Again, the executor may show that he has disbursed the assets in the ex-

(*d*) Hindsley *v.* Russell, 12 East, 232. 2 Phill. Ev. 348, 6th edit. If the executor refers a party to a third person for information respecting the effects of the testator, it should seem that an admission of assets by such third person will bind the executor: Williams *v.* Innes, 1 Camp. 364.

(*e*) Bull. N. P. 145.

(*f*) Cleverley *v.* Brett, cited by Buller, J., 5 T. R. 8. 2 Phill. Ev. 348, 6th edit.

(*g*) See further as to what is an admission of assets, *post*, p.*1894.

(*h*) Reeves *v.* Ward, 2 Bing. N. C. 235.

(*i*) See *ante*, p.*879 *et seq.*

(*k*) The Governors of Chelsea Water-Works *v.* Cowper, 1 Esp. N. P. C. 277. *Ante*, p. *881. But according to the judgment of Lawrence, J., in Hickey *v.* Hayter, 6 T. R. 388, these payments without notice must be pleaded.

[*1857]

penses of the funeral, or of probate (*l*), or administration, or, as it should seem, in the reasonable charges of collecting the debts of the deceased (*m*). So he may show that he has retained money in his hands to pay for the expenses of administration, to which he has made himself liable, without proving that he has paid them (*n*).

Where the executor shows payments made by him to the extent of the assets proved by the plaintiff to have come to *his hands, the plaintiff may show, in answer, that the funds so applied did not come to the defendant as executor, but were handed to him in trust to pay the testator's debts, and were not part of the assets first proved to have come to his hands (*o*).

The defendant could not, under a plea of *plene administravit*, give evidence of the existence of outstanding debts of a higher nature; such defense must have been pleaded (*p*), and probably now also must be pleaded.

Again, the defendant could not show, in answer to proof of assets, that he had applied them in the payment of debts since the commencement of the suit; for under *plene administravit*, no payments, made after the action commenced, could be given in evidence (*q*). If, therefore, the executor had paid other creditors of superior degree after action commenced, he must have pleaded that matter specially, and if he has paid other creditors of equal degree, since the writ issued, he ought, it would seem, to plead the fact specifically (*r*).

It should seem (as there has already been occasion to point out) (*s*), that if, in the distribution of assets, a creditor misleads an executor, either by laches or express authority, so as thereby to induce him to pursue a course he would not otherwise have pursued, the credi-

(*l*) It is a question for the jury whether the executor has committed a *devastavit* by swearing the property above its value without reasonable ground, and so incurring a greater stamp duty than was requisite, seeing that the executor is bound to act promptly, and therefore is not to be held to too close a search for the testator's property: Jackson *v.* Bowley, Carr. & M. 97.

(*m*) Giles *v.* Dyson, 1 Stark. N. P. C. 32. But he cannot be allowed for disbursements in the schooling, feeding, and clothing of the children of the testator, subsequently to his decease: *Ibid.*

[*1858]

(*n*) See *ante*, p. *1851. Gillies *v.* Smither, 2 Stark. N. P. C. 528.

(*o*) Marston *v.* Downes, 1 A. & E. 31.

(*p*) Bull. N. P. 141. 1 Saund. 333, *a.* note (8). *Ante*, p.*879.

(*q*) Dyer, 32, *a. in margine.* Com. Dig. Admon. C. (2). Nightingale *v.* Lee, 1 Freem., 110.

(*r*) R. S. C. 1883, Ord. XIX. r. 4.

(*s*) *Ante*, p.*1206.

tor is precluded from complaining of an insufficiency of assets (*t*). So where a party entitled to *a legacy under a will has a claim against the testator, which he conceals from the executors till after he has received his legacy, he cannot afterward, in an action against the executors, object that the amount of the legacy was not paid in a due course of administration (*u*).

Judgment against an executor:

Whenever the action against an executor or administrator can only be supported against him in that character, and he pleads any plea which admits that he has acted as such, (except a release to himself) the judgment against him must be, that the plaintiff do recover the debt and costs to be levied *out of the assets of the testator*, if the defendant have so much, but if not, then *the costs* out of the defendant's *own goods* (*x*). So where the executor pleads *plene administravit*, and it is found against him, the judgment is *de bonis testatoris, et si non, &c.*, then the costs *de bonis propriis* (*y*).

It was formerly held that where the defendant pleaded *ne unques*

(*t*) Richards *v.* Browne, 3 Bing. N. C. 499, by Tindal, C. J. *Ante*, p.*1206. It was held in Jewsbury *v.* Mummery, L. R. 8 C. P. 56, that a defense of this character could be properly pleaded under a plea of *plene administravit:* probably now it would have to be specifically pleaded under R. S. C. 1883, Ord. XIX. r. 4. A creditor does not lose his right to sue the executors by mere laches. But if the creditor misleads the executors, so that they are thereby induced to part with the assets in a manner which would be a *devastavit*, then the creditor cannot complain of the *devastavit*. Although C. J. Tindal uses the word "laches," he does not mean that mere doing nothing will deprive the creditor of his remedy; he means "conduct:" *per* Chitty, J., Re Birch, 27 C. D. 622. There is no rule in equity any more than in law that the mere non-suing by any specialty creditor for any period within the statutory limit of twenty years is such negligence as deprives him of the right of requiring payment of the specialty debt. And therefore if an executor disposes of the estate of the testator without providing for a liability of the testator under a covenant, he will be liable for the amount as upon a *devastavit*, even after the lapse of eighteen years: Re Baker, 20 C. D. 230.

(*u*) Stroud *v.* Stroud, 7 M. & Gr. 417.

(*x*) 1 Saund. 335, note (10), to Hancock *v.* Prowd. Gorton *v.* Gregory, 3 B. & S. 90. The court refused, after a lapse of six years, to allow a judgment for the debt *de bonis testatoris*, and for the costs *de bonis testatoris et si non de bonis propriis*, to be altered to a judgment generally *de bonis testatoris et si non de bonis propriis*, even if the latter were clearly the judgment to which the plaintiff was entitled: the distinction being between an alteration to *discharge*, and one to *fix*, the personal liability of the executor: Burroughs *v.* Stevens, 5 Taunt. 556.

(*y*) 1 Roll. Abr. 931 (D.), pl. 3. Wentw. Off. Ex. 344, 14th edit.

[*1859]

executor or *administrator*, or a release *to himself*, and it was found against him, the judgment was, that the plaintiff do recover both *the debts and costs*, in the first place, *de bonis *testatoris, si, &c.*, and *si non, &c., de bonis propriis* (*z*). The reason alleged was, because the executor could not but know these to be false pleas: But the same reason seems equally to apply to other pleas where the judgment was different (*a*). And this probably would be held no longer to be law, especially as the rule was rather a pleading result, deduced from pleading admissions, which the court would not let the defendant remedy by amendment, than a punishment inflicted by the court, which had indeed no jurisdiction to inflict such a punishment.

For what amount judgment shall be upon a plea of *plene administravit:*

With respect to the *amount* for which judgment should be entered against the executor upon a plea of *plene administravit*, if the executor plead either a general or special *plene administravit*, he is liable only to the amount of the assets proved to be in his hands (*b*). Thus in Harrison *v.* Beccles (*c*), the plaintiff, having proved a debt of 80*l.*, took a verdict on the *non assumpsit* for the sum, and having proved 25*l.* assets unadministered, he took a verdict on the *plene administravit* for that sum, and judgment *quando*, &c., for the residue (*d*).

(*z*) Bro. Exors. 34. 1 Roll. Abr. p. 930 (C.), pl. 2, 8, p. 933, pl. 15. Bull *v.* Wheeler, Cro. Jac. 648. Wentw. Off. Ex. 338, 340, 14th edit. 1 Saund. 336, *b.* note (10). Hooper *v.* Summersett, Wightw. 20, *per curiam.*

(*a*) 1 Saund. 336, *b.* note (10).

(*b*) 1 Saund. 219, *b.* note to Wheatley *v.* Lane. Jackson *v.* Lyon, Carr. & M. 97.

(*c*) Cited 3 T. R. 688.

(*d*) Hancock *v.* Podmore, 1 B. & Ad. 265, *per* Bayley, J. *Accord.* The following form is taken from Serjt. Williams' note in Sir E. V. Williams' edition, 1 Wms. Saund. 608, 609, for entering up judgment on the two issues of *non assumpsit* by the testator, and of *plene administravit* by the defendant, to which the plaintiff replied that the defendant had assets since the commencement of the suit, where the jury find the first issue for the plaintiff, and, on the second issue, that the defendant has assets to satisfy only *part* of the debt: "As to the first issue between the said parties within joined, [the jurors] upon their oath do say, that the within-named William Clarke (the testator) in his lifetime did undertake and promise in manner and form as the said Francis hath above thereof complained against her the said defendant Mary (the executrix), and they assess the damages of the said Francis by reason of the not performing of the said promises and undertakings, over and above his costs and charges by him about his suit in this behalf expended, to 80*l.*, and for those costs and charges to 40*s.* And as to the last issue between the said parties within joined, the jurors aforesaid upon their oath aforesaid say, that the said Mary, at the time of the commencement of the suit of the said Francis in this behalf, and since had

[*1860]

judgment upon *plene administravit*, when one only of several executors is found to have assets:

*When several executors plead *plene administravit severally* by several attorneys, and the jury find that one of them only has assets, judgment shall be given against him only and the rest shall go quit (*e*). So too in Parsons *v.* Hancocke (*f*), where in an action against several executors, they all pleaded *jointly* that they had fully administered, &c., and the plaintiff proved assets in the hands of some only of the defendants, *Parke, J., directed the jury to find a verdict for the plaintiff against the latter, and, as to the other executors, to find a verdict for the defendants (*g*).

executor's liability and right to costs as defendant:

It will appear, on referring to the description above given of the proper mode of entering judgment against executors and administrators (*h*), that, when defendants, they have no privilege as to costs; but, on the contrary, are

goods and chattels which were of the said William at the time of his death in her hands to be administered to the value of 40*l.*, parcel of the said damages above assessed, wherewith she the said Mary might have satisfied the said Francis 40*l.*, parcel of the said damages; and as to 40*l.* residue of the said damages, that the said Mary, at the time of the commencement of the suit of the said Francis in this behalf, or ever since, had not any other goods and chattels which were of the said William at the time of his death in the hands of the said Mary to be administered, wherewith she could have satisfied the said Francis the said 40*l.*, residue of the said damages so assessed as aforesaid: Therefore it is considered that the said Francis do recover against the said Mary the said 40*l.* by the said jury in form aforesaid found, parcel of the said damages of 80*l.* above assessed, together with his costs and charges by the said jury in form aforesaid assessed, and also 35*l.* for his costs and charges of increase by the said Court of our said lord the King here adjudged to the said Francis with his assent, which said damages, costs, and charges, in the whole amount to 77*l.*, to be levied of the goods and chattels which were of the said William at the time of his death in the hands of the said Mary to be administered, if she hath so much in her hands to be administered, and if not, then the said costs and charges, parcel of the damages last mentioned, amounting to 37*l.*, to be levied of the proper goods and chattels of the said Mary, and that, &c., &c., and that the said Francis do recover the said 40*l.* residue of the said damages in form aforesaid assessed, to be levied of the goods and chattels which were of the said William at the time of his death, *or which since the pleading of the said second plea* of the said Mary, have come or at any time hereafter shall come, to the hands of the said Mary to be administered. And the said Mary in mercy," &c.

(*e*) Bellew *v.* Juckleden, 1 Roll. Abr. 929 (B.), pl. 5.

(*f*) 1 Mood. & Malk. 330.

(*g*) See also the remarks of the same learned judge in Cousins *v.* Paddon, 2 Crompt. M. & R. 558.

(*h*) *Ante*, p.*1859.

liable to pay them *de bonis propriis* if there are no assets (*i*). The liability as well as the right to costs in the case of executors and administrators is governed, as in the case of ordinary litigants, by the provisions of R. S. C. 1883, Ord. LXV. (*k*).

Judgment of assets *in futuro:*

In an action against an executor or administrator, if the defendant pleads *plene administravit*, and it cannot be proved that he has assets in hand, the plaintiff may confess the plea, and take judgment immediately of assets *quando acciderint*, or as it is sometimes called, judgment of assets *in futuro* (*l*). But if the plaintiff take issue on the general or special plea of *plene administravit*, and it be found against him, he could not under the former practice have judgment of assets *quando*, &c. (*m*).

By taking judgment of assets *quando* the plaintiff admits that the defendant has fully administered to that time (*n*): And accordingly, the terms of the judgment are that the plaintiff do recover his debt to be levied of the goods of the testator which shall *thereafter* come to the hands of the exe*cutor. And in debt or *scire facias*, on this judgment proof of the executor's receiving assets was always at the trial confined to a period subsequent to the judgment (*o*). And it is right that such be the rule at law; for if a creditor was permitted to litigate a second time that which has been once settled between the parties, either by verdict or admission, an executor would be harassed and involved in infinite expense and litigation (*p*).

Costs on judgment of assets *in futuro.*

When an executor or administrator pleads *plene administravit*, or judgments, &c., outstanding, and *plene administravit præter*, and the plaintiff, admitting the truth of the plea, takes judgment of assets *quando*, &c., the executor or administrator is not liable to costs *de bonis propriis* (*q*): nor does he

(*i*) See Marshall *v.* Willder, 9 B. & C. 655, 658.

(*k*) See *ante*, p. *1796.

(*l*) Mary Shipley's case, 8 Co. 134, *a.* Noell *v.* Nelson, 2 Saund. 226. Parker *v.* Dee, 3 Swanst. 532, note to Drewry *v.* Thacker. See the form of such judgment, 1 Saund. 216, 217.

(*m*) 1 Roll. Abr. 929 (B.), pl. 2. 2 Saund. 217, note (1) to Noell *v.* Nelson. Lucas *v.* Jenner, 2 Dowl. 64, *per* Bayley, B. But see Hindsley *v.* Russell, 12 East, 232. The same consequence does not seem to follow where *plene administravit* is ill pleaded: Harris *v.* Goodwyn, 2 M. & Gr. 414, 415, *per* Tindal, C. J.

(*n*) 2 Saund. 219, note (2). Parker *v.* Dee, 3 Swanst. 532, note to Drewry *v.* Thacker.

(*o*) Taylor *v.* Holman, Bull. N. P. 169. 2 Saund. 219, *a.* note (2).

(*p*) Mara *v.* Quin, 6 T. R. 1. 2 Saund. 219, *a.* note (2).

(*q*) 1 Saund. 336, *b.* note. Tidd, 980, 9th edit.

seem liable thereto, when he pleads *plene administravit præter*, and the plaintiff takes judgment of the assets admitted in part, and for the residue, of assets *quando*, &c. (*r*). But it would seem that though an executor or administrator, in such case, is not personally liable to pay costs, yet that judgment may be well entered for them, to be recovered *de bonis testatoris, quando acciderint* (*s*).

Proceedings on judgment against executor *de bonis testatoris;*

Formerly there were two modes of enforcing a judgment obtained against an executor *de bonis testatoris*:† 1st, by *fieri facias* (*t*), or *scire fieri* inquiry; 2nd, by an action of debt on the judgment, suggesting a *devastavit.*

by *fieri facias:*

First, as to the proceeding by *fieri facias* or *scire fieri* inquiry: If the sheriff returned, as he might do if he pleased, not only *nulla bona* but also a *devastavit*, to a *fieri facias de* **bonis testatoris* sued out on a judgment obtained against an executor, the plaintiff, according to the ancient practice, sued out execution immediately against the defendant by *capias ad satisf.*, or *fieri facias de bonis propriis* (*u*). And it seems that the sheriff runs no risk by returning a *devastavit;* for the judgment, and no assets to be found, was sufficient evidence of a *devastavit*, in an action against him for a false return (*x*).

by *scire fieri* inquiry:

But if the sheriff returned *nulla bona* generally, without also returning *devastavit*, the ancient course was to issue a special writ, for the sheriff to inquire by a jury whether the defendant had wasted any of the goods of the deceased: And if a *devastavit* were found, and returned by the sheriff, a *scire facias* issued for the defendant to show cause why the plaintiff should not have execution *de bonis propriis*, to which *scire facias* the defendant might appear and plead. Subsequently, for the sake of expedition, the inquiry and *scire facias* were made out in one writ, which was

(*r*) Tidd, 980, 9th edit.

(*s*) De Tastet *v.* Andrade, 1 Chitt. Rep. 629, 630, *in notis.* Cox *v.* Peacock, 4 Dowl. 134.

† See American note at end of this chapter.

(*t*) He may also proceed to enforce his judgment by attachment of a debt due to the estate of the executor under R. S. C. 1883, Ord. XLV., and a Court of Equity would not restrain such proceedings, notwithstanding there has been a decree for the administration of the estate, if the judgment was obtained before the decree: Fowler *v.* Roberts, 2 Giff. 226.

(*u*) 1 Saund. 219, note (8), to Wheatley *v.* Lane. The *fieri* inquiry is only for the security of the sheriff: Rock *v.* Leighton, 1 Salk. 310. Chitty's Archbold, 14th edit. 1126.

(*x*) Rock *v.* Leighton, cited 3 T. R. 692. S. C. 1 Salk. 310.

called a *scire fieri* inquiry; reciting the judgment, *fieri facias*, and return of *nulla bona*, and after suggesting a *devastavit*, commanding the sheriff to cause the debt or damages and costs to be made of the goods of the testator or intestate, if, &c.; and if not, then, if it shall appear by inquisition that the defendant hath wasted the goods of the deceased, to give notice to the defendant to appear in court at the return of the writ to show cause why the plaintiff ought not to have execution *de bonis propriis:* And the same notice of executing such writ was required as of a common writ of inquiry (*y*).

The most usual mode of proceeding has been by action of debt on the judgment suggesting a *devastavit.*

*The executor could not plead *plene administravit* to the *scire fieri* inquiry; because the judgment against him was conclusive that he had assets to satisfy it (*z*). Neither could he, upon the taking of the inquisition, give in evidence the want of assets (*a*): And it should, therefore, seem, that the jury were bound, upon the judgment being put in evidence, together with the *fi. fa.* and the return, to find a *devastavit*, as suggested in the writ, unless the executor could show that there were goods of the testator, which might have been taken in execution, and that he showed them to the sheriff (*b*). Accordingly, in a case where the under-sheriff, on taking the inquest, directed the jury that the plaintiff was bound to give evidence of the executor's having property of the testator in his hands, and subsequently returned *nulla bona testatoris*, the court quashed the return and awarded a new *scire fieri* inquiry (*c*). However, the return of a *devastavit* was not conclusive, whether found by the inquisition, or returned by the sheriff; and therefore the executor might traverse it, by denying the *devastavit*, and taking issue on it (*d*). And upon the trial of such an issue he might show that he had not wasted the goods of the testator, but was ready to give them to the sheriff, so that it was the sheriff's fault that he did not make the debt out of them (*e*).

(*y*) Tidd, 1113, 1114, 9th edit. See the account of the establishment of this practice. 1 Saund. 219, *a.* note to Wheatley *v.* Lane.

(*z*) See *ante*, p.*1847.

(*a*) 1 Saund. 219, *d.*

(*b*) *Ibid.* Leonard *v.* Simpson, 2 Bingh. N. C. 179, 180.

(*c*) Palmer *v.* Waller, 1 Mees. & Wel. 689. S. C. 5 Dowl. 315.

(*d*) 1 Saund. 219, *c.* Merchant *v.* Driver, *ibid.* 306. Blackmor *v.* Mercer, 2 Saund. 402.

(*e*) See 1 Saund. 219, *c.* 2 Bingh. N. C. 180, 181.

The action of debt on the judgment suggesting a *devastavit* was substituted in lieu of the proceeding by *scire fieri* inquiry (*f*). The foundation of this action is the judgment obtained against the executor: which, as there has been already occasion to show (*g*), is conclusive upon him to show that he has assets to satisfy such judgment. If, therefore, upon a *fieri facias de bonis testatoris*, on a judgment obtained against an executor, either no goods can be found which were *the testator's, or not sufficient to satisfy the demand (or, which is the same thing, if the executor will not expose them to the execution), that is evidence of a *devastavit;* and, therefore, it is very reasonable that the executor should become personally liable and chargeable *de bonis propriis* (*h*).

by action of debt suggesting a *devastavit.*

This action may be brought upon the judgment against the executor, upon a bare suggestion of a *devastavit*, without any writ of *fi. fa.* first taken out upon the judgment (*i*). But the usual course is, first to sue out a *fieri facias* upon the judgment, and, upon the sheriff's return of *nulla bona*, to bring the action, and state the judgment, the writ, and return, in the declaration or statement of claim; and, on the trial, the record of the judgment, the *fieri facias*, and the return, will be sufficient evidence to prove the case (*k*).

In this form of action the judgment was *de bonis propriis* (*l*). The executor or administrator might plead that he did not waste, &c., in manner and form, &c., and under this plea he might give in evidence, that there were goods of the testator, which might have been taken in execution, and that he showed them to the sheriff (*m*). But the executor or administrator could not plead *plene administravit*, or any other plea which put his defense upon want of assets: For such plea would be contrary to what was admitted by the judgment: And if the truth were, that he had no assets, he should have set it up as a defense to the original action, and having neglected to do so, he was

(*f*) Berwick *v.* Andrews, 2 Lord Raym. 974. 1 Saund. 219, *a.* note.

(*g*) *Ante*, p.*1847.

(*h*) 1 Saund. 219, *b.* note (8), to Wheatley *v.* Lane. Blackmor *v.* Mercer, 2 Saund. 403. Erving *v.* Peters, 3 T. R. 686. Farr *v.* Newman, 4 T. R. 637.

(*i*) Wheatley *v.* Lane, 1 Sid. 397. 1 Saund. 219, *c.* note.

(*k*) Challoner *v.* Challoner, cited in Skelton *v.* Hawling, 1 Wils. 259. Erving *v.* Peters, 3 T. R. 685. 1 Saund. 219, *c.* S. P. where an irregular *testatum fi. fa.* had been issued and returned *nulla bona:* Leonard *v.* Simpson, 2 Bing. N. C. 176.

(*l*) Warren *v.* Consett, 2 Lord Raym. 1502.

(*m*) 1 Saund. 219, *c.* note. *Ante*, p. *1865.

not permitted to say so afterward (*n*). Again, if he had pleaded *plene administravit* to the original action, and the judgment was had upon a *verdict finding that *he had* assets, he was equally concluded from saying that he had no assets (*o*). And, for the same reason, he could not *give in evidence* the want of assets on the trial of the *devastavit* (*p*).

If a man obtained judgment against an executor, and died, his executor might bring an action upon the judgment against the executor, suggesting a *devastavit:* for such an action is brought against the same person against whom the judgment was had, and by that judgment assets were admitted (*q*). So, on the other hand, if a judgment was had against an executor, who afterward died, an action might, after the stat. 30 Car. II. c. 7 (*r*), be brought against his executor or administrator, upon the judgment, suggesting a *devastavit* by the first executor, and the judgment was as conclusive upon the representative of the executor, as it was upon the executor himself. Therefore, if an action of debt, suggesting a *devastavit* by the first executor in his lifetime, was brought against *his* executor or administrator, he could not have pleaded that the first executor fully administered the goods of the first testator, or any other plea, purporting that he (that is, the first executor) had no assets to satisfy the judgment, any more than the executor himself could have done (*s*). For whatever act of the executor would have made him personally liable and chargeable with the payment of the demand *de bonis propriis*, by virtue of the statute, made his *personal estate* liable in the hands of his executor or administrator (*t*). But the executor or administrator of the executor might plead, that he, the defendant, had fully administered all the estate of his own testator or intestate (*u*). Moreover the judgment in the action, when brought against the executor or administrator of the executor, against whom the judgment was obtained, was *de bonis testatoris*, or *intestati* (*x*).

Remedy on judgment obtained against the testator.

*But no action of debt suggesting a *devastavit* by the executor lay against him upon a judgment obtained *against his testator:* because that was no admission of assets by the executor: and, therefore, in such cases, it was neces-

(*n*) 1 Saund. 219, *c*. note.
(*o*) Erving *v*. Peters, 3 T. R. 693.
(*p*) Rock *v*. Leighton, 1 Salk. 310.
(*q*) Berwick *v*. Andrews, 2 Lord Raym. 971. S. C. 1 Salk. 314. *Ante*, p.*699.
(*r*) See *ante*, p. *1601.
(*s*) Skelton *v*. Hawling, 1 Wils. 258.
(*t*) 1 Saund. 219, *d*. note.
(*u*) 1 Saund. 219, *e*. note. See *infra*, p.*1871.
(*x*) 1 Saund. 219, *f*. note.

[*1867] [*1868]

sary to revive the judgment against the executor, to make him a party to it (*y*).

If the testator died after execution was sued out, the writ could be still executed on his goods in the hands of his executors, without taking any further proceeding (*z*).

But generally speaking, if a defendant died after a final judgment against him, and before execution, the plaintiff could not have execution without reviving the judgment against the personal representative of the defendant (*a*). If, indeed, there were two or more defendants, and one of them died after judgment, but before execution, the plaintiff was not put to revive the judgment against the personal representative of the deceased, but execution might be had without it against the survivors, within a year (*b*). But the execution in such case was taken out in the joint names of all the defendants, otherwise it would not have been warranted by the judgment (*c*).

Before the Common Law Procedure Act, 1852, the judgment was revived by a writ of *scire facias*, which stated, that the testator died, having made the defendant his executor, or, in the case of an administrator, the death of the intestate, and the grant of administration; and it called on the defendant to show why the plaintiff should not have execution of the debt or damages, to be levied of the goods and chattels which were of the testator or intestate at the time of his death, in the defendant's hands to be administered (*d*).

*But, under that statute the plaintiff might either sue out a writ of revivor in the form given by the act, or apply to the court or a judge for leave to enter a suggestion on the roll, that he was entitled to have execution thereon; And the act, in the 129th and two following sections, prescribes the mode of proceeding, and course to be pursued in respect of each of these substitutes for a *scire facias*.

With respect to the pleas which an executor or administrator might have pleaded in his defense, he could, it seems, have pleaded *plene administravit*, or a plea that he had nothing in his hands at the time of the death of his testator or intestate, or that no goods came to his

(*y*) Crosby *v.* Geering, cited in Berwick *v.* Andrews, 2 Lord Raym. 972.

(*z*) 1 Chitty's Archb. 810, 14th ed.

(*a*) 2 Saund. 6, note (1) to Jeffreson *v.* Morton.

(*b*) Tidd, 1120, 9th edit.

(*c*) *Ibid.*

(*d*) Tidd, 1119, 9th edit. In a *scire facias* on a judgment recovered by an executor, the death of the testator need not have been expressly averred: Moorfoot *v.* Chivers, 1 Stra. 631. S. C. 2 Lord Raym. 1395. Tidd, *ubi supra.*

hands except so much, if any did, and show how he administered them (*e*).

After the plaintiff had obtained judgment of execution against the executor, he might bring an action of debt in the *debet* and *detinet* on the latter judgment against the executor, suggesting a *devastavit:* And in such action the judgment was conclusive against the defendant, that he had assets: Therefore he could not plead *plene administravit;* and the judgment was *de bonis propriis* (*f*).

Since the passing of the Judicature Act it would seem that the judgment creditor, on a judgment against the testator, would have to apply for judgment under R. S. C. 1883, Ord. XLII. r. 23, and if the executor deny on the hearing of the summons that he has in his hands assets of the testator against which execution ought to go, the judge, if he think fit, may order that any issue or question necessary to determine the rights of the parties shall be tried in any of the ways in which an action may be tried: and that the issue would be so framed as to allow the executor to raise any of the defenses which he formerly could have raised on the writ of *scire facias*, or under the Common Law Procedure Act. *There seems nothing in the order to enable the creditor to raise an issue of *devastavit* under the proceedings directed by it.

Proceedings on judgment of assets *in futuro.*

If a judgment of assets *quando acciderint* has been entered against an executor and administrator, the plaintiff cannot have execution until some assets come into the hands of the defendant.

If assets come to the hands of the executor or administrator the plaintiff can apply for leave to issue execution under R. S. C. 1883, Ord. XLII. r. 23, for this is within the very terms of clause (c) of the rule, which provides that where a party is entitled to execution upon a judgment of assets *in futuro* the party alleging himself to be entitled to execution may apply to the court or a judge for leave to issue execution accordingly: And such court or judge may, if satisfied that the party so applying is entitled to issue execution, make an order to that effect, or may order that any issue or question necessary to determine the rights of the parties shall be tried in any of the ways in which any question in an action may be tried.

(*e*) Newton *v.* Richards, 1 Salk. 296. 4 Mod. 296. 1 Lord Raym. 3, 4. 2 Saund. 72, *dd.* note (4). Hickey *v.* Hayter, 6 T. R. 384.

(*f*) Hope *v.* Bague, 3 East, 2.

[*1870]

Formerly the plaintiff proceeded by an action of debt upon the judgment, or by the writ of revivor, substituted by the C. L. P. Act, 1852, in lieu of a *scire facias.* And it seems convenient to retain in this edition the statement of the pleadings and necessary allegations under a *scire facias,* because such statement will furnish a guide as to what the judgment creditor must allege in his affidavit to entitle him to leave to issue execution under Ord. XLII. r. 23, and as to the form of the issue should one be directed.

If the judgment was in the ordinary form, it was held necessary to state, in the writ of *scire facias,* that the assets came to the executor's hands *after* the judgment; for that the *scire facias* must pursue the terms of the judgment, which, in this case, were, that the plaintiff do recover his debt to be levied of the goods of the testator which shall *thereafter* come to the hands of the executor: Therefore, where a *scire facias,* on such a judgment as this, of assets **quando acciderint,* stated that divers goods, &c., of the testator, sufficient to pay, &c., had come to, and were in the hands of the defendant to be administered, &c., without stating that those goods had come to the defendant's hands *since the judgment,* and prayed execution against the defendant to be levied of those goods, according to the form and effect of his said recovery, &c., the defendant pleaded, that *after the plaintiff's judgment,* no goods, &c., of the testator had come to the defendant's hands to be administered, &c.; to which the plaintiff replied, that divers goods, &c., had come to the defendant's hands, without adding, *since the judgment;* and on demurrer it was adjudged, that the *scire facias* was wrong, for want of the words "*after the judgment:*" For when an executor pleads *plene administravit,* the plaintiff may either deny, or admit that allegation: if he admits it, he takes judgment, and prays that his debt may be levied of such assets as may *afterward* come to the hands of the executor to be administered; the praying of judgment is an admission that there are no assets in the executor's hands at that time (*g*).

Where, upon a suggestion of assets, a *scire facias* was taken out, and assets were found for part, judgment was given to recover so much immediately, and the residue of assets *in futuro* (*h*).

For those causes of action which are sustainable against an execu-

(*g*) Taylor *v.* Holman, Bull. N. P. 169. 2 Saund. 219, *a.* note.

(*h*) Perryman *v.* Westwood, cited in 1 Ventr. 95, and 1 Sid. 448.

[*1871]

tor in respect of the acts of the deceased, the plaintiff, on the death of a *sole* executor, may maintain the action against his executor: for the executor of such executor is, to all intents and purposes, the executor and representative of the first testator (*i*). But, on the death of an executor, without appointing an executor of his own, or on the death of an administrator, the actions above mentioned must be brought against the administrator *de bonis non* (*k*).

Remedies against executor of executor.

With respect to the remedies for the *devastavit* of an executor or administrator, in the event of his death, it has already appeared (*l*) that, at common law, no executor or administrator was answerable for a *devastavit* by his testator or intestate: But, by the statute 30 Car. II. c. 7, and 4 & 5 Wm. & M. c. 24, s. 12, this defect has been remedied (*m*). So that, since these statutes, if a judgment be recovered against an executor, who afterward dies, an action may now be brought against his executor or administrator, suggesting a *devastavit* by the first executor (*n*). And in every case where the executor in his lifetime was in any way guilty of any act which amounts in law to a *devastavit*, such as exhausting the assets by payment of debts of an inferior degree before those of a superior, and the like, an action may be brought against the executor, or administrator of such executor, suggesting a *devastavit*, by the former executor. And the judgment must be *de bonis testatoris* (*o*).

By 51 & 52 Vict. c. 43, s. 95, an executor or administrator may sue or be sued in the County Court as if he were a party in his own right (*p*).

Executor is within the County Court Act.

Where the lessee of lands dies before the expiration of the term, and his executor or administrator continues in possession during the remainder, a distress may be taken for rent due for the whole term (*q*). And the executor or

Remedy against executor by distress:

(*i*) See *ante*, p.*204.

(*k*) See *ante*, pp.*408, *411.

(*l*) *Ante*, p.*1601.

(*m*) *Ante*, p.*1601. See the observations of Wood, V.-C., on these statutes in Thorne *v.* Kerr, 2 Kay & J. 63, 64. But the statute of 30 Car. II. c. 7, was held not to make an executor of an executrix *de son tort* liable for a breach of contract committed by the person with whose property the executrix *de son tort* has intermeddled. Wilson *v.* Hodson, L. R. 7 Ex. 84.

(*n*) See *ante*, p.*1867.

(*o*) 1 Saund. 219, *e. f.* note (8) to Wheatley *v.* Lane. Coward *v.* Gregory, L. R. 2 C. P. 153, 137.

(*p*) See *ante*, p.*1798.

(*q*) Wentw. Off. Ex. 291, 14th edit. Braithwaite *v.* Cooksey, 1 H. Black. 465.

*administrator cannot plead *plene administravit* in bar to the avowry (*r*). So the distress may be taken by virtue of the stat. 8 Ann. c. 14, ss. 6 and 7, within six months after the determination of the tenancy, if the executor or administrator continues in possession (*s*).

The death of either party is the countermand of a warrant of attorney to confess judgment (*t*); and, therefore, upon a motion to enter up judgment, if it appears that the defendant is dead, the court will not grant the motion (*u*). So a *cognovit actionem* is revoked by the death of the party (*x*).

Judgment cannot be entered on warrant of attorney or cognovit given by testator:

There has already been occasion to consider, in cases of arbitration, the effect of the death of either party, before or after the making of the award (*y*). It may here be observed, that the court will not grant an attachment against an executor for the non-performance of an award, which was made under a reference by rule of court entered into by the testator (*z*).

Proceeding against executor on reference to arbitration by testator.

If a solicitor's bill against the testator should be referred to taxation after his death, questions of difficulty may arise as to the effect of the order for payment by the executor or administrator of the sum found due. In cases where justice requires that the order for taxation should be made, and it nevertheless appears probable that, by reason of deficiency of assets, or the like, payment of the amount found to be due ought not to be made without further investigation, the court or judge, by whom the order for taxation is made, ought, it *should seem, to abstain from adding the usual order for payment or the delivery up of deeds (*a*).

Liability of executor to pay an attorney's bill after taxation.

If, when a bill of exchange becomes due, and is dishonored, the drawer or indorser is dead, notice of the dishonor ought to be given to his personal representative (*b*). Where

Proceedings against executors of parties to bills of exchange.

(*r*) Wentw. *ubi supra.*

(*s*) Braithwaite *v.* Cooksey, 1 H. Black. 465.

(*t*) See *ante*, p. *781. Tidd, 551, 9th edit.

(*u*) Tidd, 561, 9th edit. Harden *v.* Forsyth, 1 Q. B. 177. It will make no difference that the defendant, by the memorandum on the warrant, agreed for himself and his executor that it should be lawful to enter up judgment at any time, notwithstanding he should be dead: Heath *v.* Brindley, 2 A. & E. 365.

(*x*) See Chitty's Archbold, 14th edit. 1030.

(*y*) *Ante*, pp. *782, *783.

(*z*) Newton *v.* Walker, Willes, 315.

(*a*) See Re Dalby, 8 Beav. 469.

(*b*) Byles on Bills, 14th ed. 238. In America it has been held, that where the indorser of a note is dead at the

the drawee, acceptor, or maker, is dead, the bill or note must be presented to his executors or administrators (*c*), unless where the bill is made payable and is presented at a particular place, in which case it is not necessary to present it also at the house of the executor or administrator (*d*). In case there is no representative, the holder should demand payment at the house of the deceased (*e*). If the holder of a bill made the acceptor his executor, and died, this, which at law (*f*) operated as a discharge of the debt, by making the debtor executor (*g*) operated also as a discharge of the drawer and prior indorsers (*h*).

Effect of injunction.

Where an injunction had issued against the defendants *in an equity suit, restraining them from disposing of the estate of their testator, the Court of Exchequer refused to stay proceedings against them in an action in which the debt was not admitted, observing that the injunction might be a ground for applying to stay execution (*i*).

Verdict against testator evidence against executor.

A verdict against a testator or intestate may be produced in evidence against his executor or administrator, and binds him (*k*).

In an action against executors for money had and

time it becomes due and there are executors or administrators at that time known to the holder, notice must be given to them: but that if there are no personal representatives at the time, a notice sent to the residence of his family is sufficient, and that it is not necessary afterward to give notice to executors or administrators, subsequently becoming such: Merchant's Bank *v.* Birch, 17 Johns. R. 25. Bayley, 418, Amer. edit. 45 & 46 Vict. c. 61, s. 49 (9). Chalmers on Bills of Exchange, 3rd edit. p. 149.

(*c*) Byles on Bills, 14th ed. 288. Chalmers on Bills of Exchange, 3rd edit. p. 136. 45 & 46 Vict. c. 61, s. 45 (7).

(*d*) Philpot *v.* Briant, 3 Carr. & P. 244. 45 & 46 Vict. c. 61, s. 45 (5).

(*e*) Roscoe on Bills, 147.

[*1875]

(*f*) The appointment of a debtor as executor to his creditor did not operate as a discharge of the debtor in equity, but it was considered that the debt had been paid to the debtor executor by himself, and he was held accountable accordingly. The equity rule will now prevail. By sect. 61 of 45 and 46 Vict. c. 61, when the acceptor of a bill is or becomes the holder of it at or after its maturity, in his own right, the bill is discharged, but this section does not seem to affect the matter, since the executor acceptor does not become the holder in his own right.

(*g*) See *ante*, p.*1176.

(*h*) Chitty on Bills, 569, 8th edit.

(*i*) Davis *v.* Salter, 2 Cr. & J. 466.

(*k*) R. *v.* Hebden, Andr. 389. Rosc. Ev. 100, 2nd edit. See Smith *v.* Smith. 3 Bing. N. C. 29, as to the admissibility

received by their testator, the plaintiff relied on an admission of the testator contained in his will: Notice had been given to the defendants to produce the probate, but no evidence was given to prove that the probate was in their possession: An officer of the Spiritual Court produced a document purporting to be the original will of the deceased, bearing the seal of the court, and also an indorsement, made by the officer of the Spiritual Court, purporting that probate had been granted to the defendants on that instrument as of the will of the deceased, and that they had made oath of the value of the effects accordingly: It was objected, on the part of the defendant, that the will should have been proved by one of the subscribing witnesses, and further, that probate not being produced, the next best evidence was the act of the Spiritual Court, which was not produced: But it was held that the document produced must be taken as proving that the defendants had obtained probate of the paper, and had therefore treated it as the will of their testator, and consequently that it ought to be received against them, at all events, as secondary, if not as original, evidence (*l*).

What is good secondary evidence of the contents of the will.

of the declarations of the deceased, as evidence against the executor or administrator. See also Spiers *v.* Morris, 9 Bingh. 687, as to the admissibility of entries made by a deceased executor against his interest.

(*l*) Gorton *v.* Dyson, 1 Brod. & Bingh. 219. See *ante*, p.*1837. See also pp. *1792, *1793.

---

† *Actions at law against executors and administrators.* The liability of the decedent's estate on contracts and torts of the deceased has been already discussed, Vol. III. p. 279, n., *et seq.*; as well as upon contracts (p. 313, n., *et seq.*) and torts (p. 352, n., *et seq.*) of the personal representative. Where a legal liability arises or survives against the personal representative, it is, in general, enforceable by a legal action. To the effect that the Attorney General has no authority to bring such action for the misconduct of an executor or administrator, see People *v.* Simonson, 126 N. Y. 299. He may, however, sue for moneys that have escheated to the state. Fuhrer *v.* State, 55 Ind. 150.

The laws of Vermont seem to present an exception to this rule, so far as surviving liabilities of the decedent's estate are concerned, confining the remedy for them (other than by action of ejectment or replevin) to proceeding before the commissioners appointed under the statute (1880 R. L. § 2115) for the allowance of claims. As to the powers and jurisdiction of such commissioners, see Perrin *v.* Sargent, 33 Vt. 84; Boyden *v.* Ward, 38 Vt. 628; University *v.* Baxter, 43 Vt. 645; Moore *v.* Bachelder, 51 Vt. 50. Their jurisdiction does not extend to equitable claims. Brown *v.* Sumner, 31 Vt. 671. For action against an administrator or executor who has been removed, or against the estate of a deceased representative, see Vol. II. p. 159, n., *ubi*

supra. And for actions on the administration bond, see Vol. I. p. 644, n., *et seq.*

Arbitration. At common law a personal representative may submit claims against the estate to arbitration, Jones *v.* Deyer, 16 Ala. 221; and the common-law right has been held not to be superseded by the general statutory provision for arbitrations, Wood *v.* Tunnicliff, 74 N. Y. 38; or by the statute for reference of disputed claims against a decedent's estate, Id.; or by a particular statute for arbitration by a personal representative under leave or order of the court. Wamsley *v.* Wamsley, 26 W. Va. 45; Powers *v.* Douglass, 53 Vt. 471; Chadburn *v.* Chadburn, 9 Allen 173. But an award which confounds individual liabilities of the executor with liabilities of the estate will be set aside as void. Lyle *v.* Rodgers, 5 Wheat. 394. See also, Vol. II. p. 252, n., *ubi supra*, and as to the unadvisability of such proceedings, see Woerner on Admn. § 327.

Action for legacy. At common law a legatee could bring an action at law against the executor only for a specific legacy. Colwell *v.* Alger, 5 Gray 67; Blackler *v.* Boott, 114 Mass. 24. An action at law for any legacy is now given by statute in some of the United States, *Massachusetts* (1882 P. S. c. 136, § 19), *Maine* (1883 R. S. c. 65, § 31), *New Jersey* (1877 Rev. 581); and may be brought against the administrator *de bonis non* after the death of the executor, Farwell *v.* Jacobs, 4 Mass. 635; and although there may be a concurrent remedy in the Probate Court, Pitman *v.* Johnson, 15 Abb. N. C. 472; or in equity. King *v.* Berry, 2 Gr. Ch. 44; Frey *v.* Demarest, 1 C. E. Gr. 236. The action given by the Maine statute for residuary or "specific" legacies is held to mean any definite or particular legacy. Holt *v.* Libby, 80 Me. 329. An action at law for a legacy lies against the administrator of a deceased executor. McFarland *v.* McKay, 74 N. C. 258.

But an action at law lies only after demand upon the executor, Miles *v.* Boyden, 3 Pick. 213; Payne *v.* Smith, 12 N. H. 74; and after the amount applicable to the legacy has been determined by the Probate Court. Maurer *v.* Kerper, 102 Pa. St. 444. So, a residuary legatee cannot maintain an action for the residue without showing that the executor has settled his account or that he has been discharged. Gould *v.* Steyer, 75 Ind. 50. If, however, the executor has converted all of the estate and died insolvent, the legatee may sue on his bond without any preliminary accounting. Towner *v.* Tooley, 38 Barb. 598.

A legatee cannot maintain an action against the executor for failure to collect the assets of the estate, if the executor has a fund applicable to the payment of the legacy. State *v.* Adams, 71 Mo. 620. On the other hand, an executor is liable for legacies, although he has assigned the entire estate to the residuary legatees on their agreement to pay the debts, and although they have paid debts in excess of the assets turned over to them (including some debts not allowed by the executor). Brown *v.* Phelps, 48 Hun 219.

Where an action lies at law for a legacy, it may be brought in debt, Pettigrew *v.* Pettigrew, 1 Stew. (Ala.) 580; or assumpsit, Clark *v.* Herring, 5 Binn. 33; Pollard *v.* Pollard, 1 Allen 490; Tappan *v.* Tappan, 30 N. H. 505; but only if there are assets. Goodwin *v.* Chaffee, 4 Conn. 163. It may be brought on an express promise. McNeil *v.* Quince, 2 Hayw. (N. C.) 153. It is a sufficient consideration for such promise that the executor has assets in hand, McNeil *v.* Quince, *ubi supra*; Clark *v.* Herring, *ubi supra*; or that the legatee forbears suit. McNeil *v.* Quince, *ubi supra*. The judgment will be *de bonis propriis* on such promise. Clark *v.* Herring, *ubi supra*; Pettigrew

v. Pettigrew, *ubi supra;* or on a note given for the legacy by the executor. Camp *v.* Smith, 49 Hun 100. So, the liability to pay a legacy under the order of the Probate Court is an individual liability and subject to the set-off of a debt due to the executor individually. Dubois *v.* Dubois, 6 Cow. 494. Under the statute of Frauds, however, the executor's verbal promise creates no personal liability. Smith *v.* Carroll, 112 Pa. St. 390.

In general, an action will not lie for the payment of a legacy until after the statutory time allowed for settlement of the estate. But the legatee may sue before that time, if there are sufficient assets and all prior claims are paid. Brooks *v.* Lynde, 7 Allen 64. After such time has passed the legatee may sue, if there are assets in hand and no claims entitled to prior payment, although the estate has not been settled. Smith *v.* Lambert, 30 Me. 145. As to suits for legacies, in New York, see also, Rundle *v.* Allison, 34 N. Y. 180; Prentice *v.* Janssen, 79 N. Y. 478. As to the enforcement of legacies charged on land, see Vol. III. p. 198, n., *et seq.*

An action at law may be brought against the executor by a creditor of the widow, whose debts the executor was expressly directed to pay, Harkins *v.* Hughes, 60 Ala. 316; or by an attaching creditor of the legatee, Vantine *v.* Morse, 104 Mass. 275; Baker *v.* Keiser, 75 Md. 332; but not in Virginia, Whitehead *v.* Coleman, 31 Gratt. 784; nor, in general, for the interest of a contingent remainderman after a pending life estate in trust. Carson *v.* Carson, 6 Allen 397; and see Vol. II. p. 739, n., *ubi supra.*

Action for distributive share. In the United States a distributee may maintain an action at law against the administrator for his distributive share after settlement by the Probate Court by decree for distribution, Croswell on Exrs. § 680; Henry *v.* Dilley, 1 Dutch. 302; Cathaway *v.* Bowles, 136 Mass. 54; Shriver *v.* State, 65 Md. 278; Biays *v.* Roberts, 68 Md. 510; Negley *v.* Gard, 20 Ohio 310; in his own name, Kaminer *v.* Hope, 9 S. C. 253; and against the administrator individually, Biays *v.* Roberts, 68 Md. 510; Melone *v.* Davis, 67 Cal. 279; or on the administration bond, Biays *v.* Roberts, 68 Md. 510; but he cannot sue for distribution until letters of administration have been granted on the estate. Gardner *v.* Gantt, 19 Ala. 666; and even where there are no debts, and the administration has been settled, he cannot sue a third party for the recovery of the assets (*e. g.*, from one in possession under a legatee for life). Davis *v.* Corwin, 250, St. 668. In Kentucky, he may sue on the administration bond immediately after the lapse of the statutory time allowed for settlement of the estate. Commonwealth *v.* Hammond, 10 B. Mon. 62.

A joint action cannot, however, be brought by several distributees, Fitzsimmons *v.* Johnson, 90 Tenn. 416; although under a single decree for distribution. Browder *v.* Faulkner, 82 Ala. 257. So, even the trustee of a residuary legatee is not a necessary party with the executor in an action by the next of kin to recover a bequest, although the executor may have paid it to the trustee, Mabry *v.* Stafford, 88 N. C. 602; and, in general, other legatees are not necessary parties to an action by one legatee against the executor, if the legacy is not subject to abatement, Pitman *v.* Johnson, 15 Abb. N. C. 472; but where the assets are not ascertained, all legatees are necessary parties. Rexroad *v.* McQuain, 24 W. Va. 32.

Action against co-executors. Where there are several executors or administrators, they should all be joined as defendants in an action at law, Ryerson *v.* Ryerson, 1 South. (N. J.) 363; unless

there is special reason for claiming relief against one only, Cocke *v.* Haviland, 5 Dem. 11; Clements *v.* Kellogg, 1 Ala. 330; but they may sever in their pleading, and one may plead *plene administravit.* App *v.* Driesbach, 2 Rawle 287. But the action may be brought against one who was the sole acting executor (his co-executor being non-resident), Wheeler *v.* Bolton, 54 Cal. 302; or alleging a promise by one "who was then the only executor who had qualified." Benjamin *v.* Taylor, 12 Barb. 328. So, where one has rendered himself individually liable by collection of funds. Geddis *v.* Irvine, 5 Pa. St. 508.

An administrator cannot bring an action at law against his co-administrator for goods sold and work done. Cole *v.* Wooden, 3 Harr. (N. J.) 15. But where one of two executors purchases property at a joint sale, the other can sue him for the purchase money after his removal from office, Hendricks *v.* Thornton, 45 Ala. 299; and he may in such case sue on the bond, although, as one of the principals, the plaintiff may be bound to indemnify the sureties. Sperbs *v.* McCoun, 110 N. Y. 605. So, an action may be brought by the representative of a deceased executor on the bond to recover a loan of assets made by him to one of his co-executors. Alston *v.* Jackson, 4 Ired. 49; see also p. 473, n., *ubi supra.*

Action against survivor—successor. Where one of two co-administrators dies, the assets of the estate of his decedent and the remedies against the surviving administrator must be first exhausted before the original distributees can look to his estate. Wade *v.* Potter, 2 Gr. (N. J.) 278.

But where a sole administrator is defendant, the administrator *de bonis non* of the original estate should be substituted on his death, Reynolds *v.* Crook, 95 Ala. 570; or removal from office, Troy *v.* Stanton, 116 Mass. 435; and discharge, Strickland *v.* Bridges, 21 S. C. 21; and not an executor *de son tort,* Irwin *v.* Sterling, 27 Ga. 563; nor the personal representative of the deceased executor. Hardy *v.* Miles, 91 N. C. 131.

Joint debtors. As to action upon joint obligations against the survivor or the representative of the deceased debtor, or both, see Vol. III. p. 285, n., *ubi supra.* The rule differs in the several states, allowing a joint action against both upon joint obligations, Trimmier *v.* Thomson, 10 S. C. 164; or upon joint and several obligations, Poullain *v.* Brown, 80 Ga. 27; Chase *v.* Evoy, 58 Cal. 348; or on a joint obligation, requiring such suit, Harper *v.* Lacey, 62 Miss. 5; Gill *v.* Young, 82 N. C. 273; or forbidding it. Mattison *v.* Childs, 5 Col. 78; *Indiana* (1881 R. S. § 2311); State *v.* Cunningham, 101 Ind. 461; or continuing against the survivor an action brought against joint debtors, on the death of one after joint answer filed. Lanier *v.* Irvine, 24 Minn. 116. After a joint judgment recovered for a tort, and on the death of one defendant, the court will make no order for contribution by his estate, but the remedy must be exhausted against the survivor. Hammond *v.* Hoffman, 2 Redf. 92. And the estate of a deceased debtor cannot be held on an alleged joint obligation after judgment rendered in favor of the surviving co-obligor discharging him from liability. Cowley *v.* Bates, 120 Mass. 137. The statute, in *New Jersey* (1877 Rev. 742, § 3), puts joint obligations on the footing of joint and several obligations as against the representatives of a deceased obligor. Under this statute the representatives of a deceased maker of a joint promissory note may be sued in a several action during the lifetime of the surviving maker. Thompson *v.* Johnson, 11 Vroom 220.

Action against executor in representa-

tive capacity. An executor or administrator may be sued as an individual on contracts made by him in his representative capacity, Estate of Page, 57 Cal. 238; Gurnee *v.* Maloney, 38 Cal. 85; Foland *v.* Dayton, 40 Hun 563; and must, in general, be sued as an individual, see Vol. III. p. 312, n., *et seq.; e. g.*, for money loaned to him in his representative capacity, Montgomery *v.* Armstrong, 5 J. J. Marsh. 175; or for money had and received by him as such, Sibbit *v.* Lloyd, 6 Halst. 194; or a note made by him as executor, Hellier *v.* Lord, 26 Vroom 367; or business transacted by him for the estate under authority of the will, Delaware &c. Railroad Co. *v.* Gilbert, 44 Hun 201; although carried on in his name "as executor," Wickham *v.* Stern, 18 Civ. Pro. 63; or for services to an executor as such, Matthews *v.* Matthews, 56 Ala. 292; Dangerfield *v.* Smith, 83 Va. 81; Baker *v.* Fuller, 69 Me. 152; or for a balance of collateral held and collected by him in excess of the debt to the deceased, Cronan *v.* Cotting, 99 Mass. 334; or for a deposit held by the decedent as trustee and withdrawn by the executor, Anderson *v.* Thompson, 38 Hun 394; or for money received by him from his predecessor, being the proceeds of the widow's exempt property unlawfully sold by the administrator in chief. Goodbold *v.* Roberts, 20 Ala. 354.

But he can be sued only in his representative capacity on a judgment rendered against him as such (although he has become individually liable for the debt by his bond as residuary legatee), Jenkins *v.* Wood, 140 Mass. 66; or for moneys collected as executor under a public treaty and claimed adversely by the plaintiff, De Valengin *v.* Duffy, 14 Pet. 282; Thurston *v.* Lowder, 40 Me. 197; Thurston *v.* Doane, 47 Me. 79; or for conversion of the property of the plaintiff and sale of it as assets of the deceased. Simpson *v.* Snyder, 4 Ia. 557. But no judgment can be rendered against an executor in his representative capacity after his removal. National Bank of Troy *v.* Stanton, 116 Mass. 435. In New Jersey, the statute puts suits by and against administrators of every kind on the same footing as suits by and against executors. *New Jersey* (1877 Rev. 397, § 7). This has been held to apply to administrators *pendente lite*, Benson *v.* Wolf, 14 Vroom 78; Cole *v.* Wooden, 3 Harr. (N. J.) 15; Bloomfield *v.* Ash, 1 South. 314; and *de bonis non.* Carrick *v.* Carrick, 8 C. E. Gr. 364; Brownlee *v.* Lockwood, 5 C. E. Gr. 239.

Averment and proof of liability. In a declaration against a personal representative it is sufficient to aver the bare fact of his being such, Wise *v.* Williams, 72 Cal. 545; but the declaration must show his relation to the decedent in a suit upon a liability of the decedent's estate. McNeill *v.* Cook, 33 Ala. 278.

In Delaware, it is incumbent on the plaintiff to prove the probate in an action against the executor. Prettyman *v.* Wapples, 4. Harring. 299. But, in general, the burden is not on the plaintiff unless the defendant has pleaded *ne unques executor.* Espalla *v.* Richard, 94 Ala. 159. The plea of *ne unques* throws the onus on the plaintiff, and cannot be met by a demurrer, Witcher *v.* Wilson, 47 Miss. 663; but the burden falls again on the defendant when the plea has been met by the plaintiff's proving the letters. Travers *v.* Boykin, 6 Ala. 355. An executor may plead both *ne unques executor* and a plea of general issue, Langford *v.* Frey, 8 Humph. 443; or other special pleas, McNulta *v.* Ensch, 134 Ill. 46; but cannot deny his representative capacity unless he has so pleaded, McNulta *v.* Ensch, *ubi supra;* Greenville &c. Railroad *v.* Joyce, 8 Rich. 117.

Where the liability is as an individual, the description of the defendant by

his representative capacity in the writ has been disregarded as surplusage, and judgment and execution awarded *de bonis propriis*. Belvin *v.* French, 84 Va. 81; Baker *v.* Fuller, 69 Me. 152; King *v.* Beeler, 4 Bibb. 83. So, where process and declaration were against them as executors. Baugher *v.* Wilkins, 16 Md. 35. So, conversely, where the body of the declaration was against the individual, but a contract of the deceased was shown by a copy annexed. Jennings *v.* Wright, 54 Ga. 537. But in New York, the statute requires the suit to be against him as executor, and it is so brought unless the intent is to charge him, personally. Code C. P. § 1814. And where the suit is brought against him as executor, it cannot be amended to hold him individually on failure to make out a case against the estate. Austin *v.* Munro, 47 N. Y. 360; so too, Yarrington *v.* Robinson, 141 Mass. 450; and, conversely, Shangles *v.* Runk, 2 Harr. & J. 372. But see, as to amending the plaintiff's formal title in such a suit, Risley *v.* Wightman, 13 Hun 163; and disregarding a change of title in the declaration. Brockman *v.* McDonald, 16 Ill. 112. So, in Connecticut, where a legacy was attached in the hands of an executor as such, and a *scire facias* afterward issued against him individually, no judgment could be rendered against him as executor (for want of process) or as an individual (for want of cause). Middlebrook *v.* Pendleton, 47 Conn. 9; see too, Harrell *v.* Scudder, 27 Ind. 499.

The averment of the decedent's liability may be informal, *e. g.*, "for money payable by the defendant's testator," Stoner *v.* Devilbiss, 70 Md. 144; but it is not enough to aver a promise by the decedent several months after his death. Stewart *v.* Eden, 2 Caines 121. In suing an executor *de son tort* it is held, in Maine, that the declaration should be in the same form as against a rightful executor. Sawyer *v.* Thayer, 70 Me. 340.

As to the necessity of averring due presentment of the claim sued on, see Maine Central Institute *v.* Haskell, 71 Me. 487; Stevens *v.* Haskell, 72 Me. 244; Chase *v.* Evoy, 58 Cal. 348; Janin *v.* Browne, 59 Cal. 37; Cousins *v.* Partridge, 79 Cal. 224; and see also, to the effect that it need not be averred, Phipps *v.* Addition, 7 Blackf. 375; but must be proved, Granjang *v.* Merkle, 22 Ill. 249.

Joinder of counts. Counts on which there would be different judgments (*de bonis testatoris* and *de bonis propriis*) cannot be joined in one action, *e. g.*, on a promise by the testator and a promise by the executor, Myer *v.* Cole, 12 Johns. 349; De Mott *v.* Field, 7 Cow. 58; Gillett *v.* Hutchinson, 24 Wend. 184; Ross *v.* Harden, 44 N. Y. Super. Ct. 26; Strohecker *v.* Grant, 16 Serg. & R. 237; Ferrin *v.* Myrick, 41 N. Y. 315; Seip *v.* Drach, 14 Pa. St. 352; Grahame *v.* Harris, 5 Gill & J. 489; Goodbold *v.* Roberts, 20 Ala. 354; Kayser *v.* Disher, 9 Leigh 357; Moody *v.* Ewing, 8 B. Mon. 521; McDaniel *v.* Parks, 19 Ark. 671; or on a several promise by one executor and a joint promise by two co-executors. Moody *v.* Ewing, 8 B. Mon. 521. And verdict and judgment will not cure the misjoinder of counts on a contract of the deceased and the individual promise of the personal representative, Bogle *v.* Kreitzer, 46 Pa. St. 465; but a suit need not be dismissed for such misjoinder. Martin *v.* Goode, 111 N. C. 288. Even a bill in equity is multifarious, if it prays an account of the defendant's liability as a personal representative, and also for rents collected by him individually as an heir at law. Van Mater *v.* Sickler, 1 Stockt. 483.

On the other hand, an action at law may join promises by the testator and

by the executor as executor in consideration of assets already in hand, Hapgood *v.* Houghton, 10 Pick. 154; Dixon *v.* Ramsey, 1 Cranch C. C. 472; see too, Carter *v.* Phelps, 8 Johns. 440; Reeve *v.* Cawley, 2 Harr. (N. J.) 415; Benjamin *v.* Taylor, 12 Barb. 328; Malin *v.* Bull, 13 Serg. & R. 441; or in consideration of assets received for the estate at the time of the executor's promise. Bott *v.* Barr, 95 Ind. 243. So too, damages for breaches of covenant for rent before and after testator's death. Greenleaf *v.* Allen, 127 Mass. 248; but see, *contra*, Pugsley *v.* Aiken, 14 Barb. 114.

Set-off. In an action against an executor or administrator it is his duty to set off the liability of the plaintiff to the estate, *e. g.*, his liability to refund an overpayment received by him on a legacy and needed for debts, Smith *v.* Smith, 79 N. C. 455; or his share of a judgment recovered against himself and others. Rudolph *v.* Underwood, 88 Ga. 664. And his indebtedness may be set-off against his claim for the funeral expenses of the deceased. Blood *v.* Kane, 130 N. Y. 514. The set-off is admissible for its face value against an insolvent creditor, Skiles *v.* Houston, 110 Pa. St. 254; or in favor of an insolvent estate, Medomak Bank *v.* Curtis, 24 Me. 36 (and although it might not be admissible in such case *inter vivos*). An executor must set off his own indebtedness to the estate against his own claim, and cannot retain moneys to pay himself in disregard of the set-off. Terhune *v.* Oldis, 17 Stew. (N. J.) 146. Set-off is likewise available against the claim of a legatee. Blackler *v.* Boott, 114 Mass. 24. As to evidence establishing such set-off by the plaintiff's admissions, see Estate of Miller, 151 Pa. St. 525. So, the price of property of the deceased sold by the executor to a distributee may be set off against his distributive share. Grier's Appeal, 25 Pa. St. 352. See, for set-off against legacies, Vol. II. p. 619, n., *et seq.*; and against distributive shares, Vol. II. p. 849, n., *et seq.* The executor must plead his set-off specially, Knippenberg *v.* Morris, 80 Ind. 540; and cannot, in the statutory proceeding on a rejected claim, recover an affirmative judgment against the claimant for any excess found due to the estate. Mowry *v.* Peet, 88 N. Y. 453.

But an executor cannot set off his own claim for the funeral expenses of the plaintiff's intestate paid by him as a volunteer, Quin *v.* Hill, 4 Dem. 69; nor a claim against a deceased creditor, which is barred by non-presentment, Spaulding *v.* Warner, 59 Vt. 646; nor a claim for moneys "received in trust" by plaintiff "to be accounted for" to the decedent. Gannon *v.* Ruffin, 151 Mass. 204. So, he cannot interpose his claim as executor against the plaintiff by way of set-off against a suit brought against him individually, Lanier *v.* Brunson, 21 S. C. 41; Collins *v.* Greene, 67 Ala. 211; nor even against the suit of a distributee brought under a decree for distribution, Shrover *v.* Garrison, 30 W. Va. 456; although it has been held that he may set off a debt due to himself individually against a legatee's suit for his legacy. Solliday *v.* Bissey, 12 Pa. St. 347. And an administrator cannot agree that a claim due from his intestate may be set off against a debt due to him individually, to the prejudice of the estate. Bishop *v.* Dillard, 49 Ark. 285.

Special Statutes of Limitations. In the United States the time for bringing an action against an executor or administrator is variously limited by special statutes. It must be brought within one year after personal notice to sue, in *North Carolina* (1883 Code, § 156); within two years after bond given, in *Massachusetts* (1882 P. S. c. 136, §§ 9, 11), except as to new assets; within two years after accrual of cause of

action and within thirty days after demand, in *Maine* (1883 R. S. c. 87, § 12); within three years after bond given, in *Kansas* (1889 G. S. § 2890), if due notice of appointment is given; within three years after letters granted, in *New Hampshire* (1891 P. S. c. 191, § 4); within three years after accrual of cause of action, in *Rhode Island* (1882 P. S. c. 189, § 8), if notice of appointment given; within four years after qualification of the personal representative, in *Mississippi* (1892 An. Code, § 2745); within four years after accrual of cause of action, in *Ohio* (1890 R. S. § 6113); within five years, in *Florida* (1892 R. S. § 1910); within seven years after action accrued and before settlement of the estate, in *Kentucky* (1894 Stats. §§ 25, 29–30); within ten years after action accrued, in *Georgia* (1892 Code, § 2922); within two years after letters granted, or three years in case of nonresidence, or within seven years regardless of all personal disabilities, in *Tennessee* (1884 Code, §§ 3481–83).

The Statutes of Limitations have been held not to run against creditors of the estate until letters are taken out and there is some person against whom suit can be brought. This applies equally to creditors, Fishwick *v.* Sewall, 4 Harr. & J. 393; McKinder *v.* Littlejohn, 1 Ired. 66; and distributees (*e. g.*, a remainderman seeking protection during the life estate). Gieger *v.* Brown, 4 McCord 423. The statute will not run, although there is a delay of many years in taking out letters, Marsteller *v.* Marsteller, 93 Pa. St. 350; McKinder *v.* Littlejohn, 1 Ired. 66; provided the letters are taken out within twenty years after the decedent's death. Gallup *v.* Gallup, 11 Met. 445. It will run, however, from the first letters granted, and not be stayed by a subsequent vacancy in the office and appointment of a later representative, Boyd *v.* Lowry, 53 Miss. 352; unless the original appointment was void. Mann *v.* Flynn, 10 Leigh 93. In the case of a foreign decedent the statute will run only from the grant of letters in the jurisdiction where the action is brought, and not from the original foreign letters. Benjamin *v.* De Groot, 1 Denio 151; Hobart *v.* Connecticut Tpk. Co., 15 Conn. 145.

In other states the Statutes of Limitations run from the qualification of the personal representative, Lawrence *v.* Norfleet, 90 N. C. 533; Knowles *v.* Whaley, 15 R. I. 97; *i. e.*, from the granting of letters, where the giving of a bond is excused, Jones *v.* Jones, 41 O. St. 417; or from the giving of a proper bond, where a bond is required, Abercrombie *v.* Sheldon, 8 Allen 532; and the statute will not run from a bond given without a surety, where sureties are required. Id. So, from giving the statutory bond as residuary legatee. National Bank of Troy *v.* Stanton, 116 Mass. 435. And the statute, in Massachusetts, bars in such case a liability which accrues after the expiration of the statutory term, such as a subsequent breach of a covenant made by the decedent. Holden *v.* Fletcher, 6 Cush. 235. As to such bonds, see Vol. I, p. 627, n., *ubi supra*. In other states the statute runs from the death of the decedent, *e.g.*, on a running account which then became due, Campbell *v.* Maple, 105 Pa. St. 304; making no exception for personal disabilities, Williams *v.* Conrad, 11 Humph. 412; or for delay in granting letters. Beasley *v.* Waugh, 51 Ala. 156.

In New York, the statute runs from the settlement of the executor's final account, Code C. P. §§ 1819, 406; against legatees, Matter of May, 31 N. Y. S. R. 50; Matter of Collins, 6 Civ. Pro. 85; Cocks *v.* Haviland, 31 N. Y. S. R. 742; Matter of Hodgman, Id. 479; or creditors (*e. g.*, proceeding for sale of the land for debts), Mead *v.* Jenkins, 95 N. Y. 31; even where the account was delayed and not

settled for many years. Matter of May, 31 N. Y. S. R. 50; Mead *v.* Jenkins, *ubi supra.* So too, in action by creditor, legatee, or distributee, Andres *v.* Powell, 97 N. C. 155; Roberts *v.* Johns, 16 S. C. 171; as well as in actions on the administration bond. Reaver *v.* Davis, 99 N. C. 425.

In other cases the statute has been held to run from the judicial allowance of the claim (and not from the nominal date of a judgment entered *nunc pro tunc*), Borer *v.* Chapman, 119 U. S. 587; or (in the case of an injunction bond) from the dissolution of the injunction. Pickett *v.* Boyd, 11 Lea 498.

Stay laws. In many of the United States all actions against personal representatives of a deceased debtor are stayed by statute for a specific period. Thus, actions are stayed for six months after letters granted, judgments for eighteen months, in *Alabama* (1886 Code, § 2263). Actions are stayed for six months after letters granted, in *Florida* (1892 R. S. § 1908), *Kentucky* (1894 Stats. § 3847), *Mississippi* (1892 An. Code, § 2753), *New Jersey* (1877 Rev. 763, § 57), *Oregon* (Code C. P. § 373), *Tennessee* (1884 Code, § 3454); for twelve months after letters granted, in *Georgia* (1882 Code, § 2548), *Massachusetts* (1882 P. S. c. 136, § 1), *New Hampshire* (1891 P. S. c. 191, § 1), *Rhode Island* (1882 P. S. c. 189, § 8), *South Carolina* (1893 R. S. § 2322); and in *Maine* (1883 R. S. c. 87, § 11), on penalty of the plaintiff paying his own costs in any earlier action; for eighteen months after bond given, in *Ohio* (1890 R. S. § 6108); until end of time for presentment of claims expires, in *Wisconsin* (1889 An. Stats. § 3845).

Under these statutes no action lies against the personal representative within six months after letters, Anderson *v.* Newman, 60 Miss. 532; or against an executor, who has given bond as residuary legatee, within one year after bond given. National Bank of Troy *v.* Stanton, 116 Mass. 435. The declaration should allege the granting of the letters within the prescribed period before the commencement of the action, Wells *v.* Applegate, 10 Or. 519; or the defendant may specially plead that the action was brought before the prescribed time had elapsed. National Bank of Troy *v.* Stanton, 116 Mass. 435; Ferrand *v.* Walker, 5 Blackf. 424. His defense is in the nature of a dilatory plea, and the court should not dismiss the bill, but should order the plaintiff to pay costs and the bill to stand over until the proper time for the hearing. Daniel *v.* Lehre, 2 Strobh. Eq. 83.

But the stay laws apply only to actions, and not to the execution of a power of sale given to the representative, Roland *v.* Coleman, 76 Ga. 652; nor to an action against an administrator *de bonis non.* Cooley *v* Patterson, 49 Mo. 570. And in Mississippi, the act applies only to suits by distributees. Eyrich *v.* Capital State Bank, 67 Miss. 60. And the statute allowing a longer period for settlement of the estate will not require a legatee to delay his action, after the debts are paid, and sufficient funds are in hand for all unpaid legacies. Brooks *v.* Lynde, 7 Allen 64.

Extension of Statute of Limitations—By stay law—By death. In some of the United States the Statute of Limitations is expressly extended or lengthened for the term during which actions are stayed. This is so for six months after letters granted, in *Alabama* (1886 Code, § 2633). So, for six months after the decedent's death, in *New Jersey* (1877 Rev. 595, § 9); and for twelve months after his death, in *Rhode Island* (1882 P. S. c. 206, § 7). So, for eighteen months after testator's death, in *New York* (Code C. P. § 391); and for the time between the decedent's death

and letters granted, not exceeding six months, in *Alabama* (1886 Code, § 2632); and for the time between decedent's death and letters granted, in *Mississippi* (1871 Code, § 2162). Boyer *v.* Francis, 56 Miss. 573.

It is also provided in many states that on claims which are not already barred at the death of the debtor action may be brought for six months after his death, in *California* (Code C. P. § 363), *Oregon* (1892 An. Laws, § 18); or one year after his death, in *Wisconsin* (1889 An. Stats. § 4234); or two years after his death, in *Massachusetts* (1882 P. S. c. 197, § 12), *Minnesota* (1891 G. S. § 8722); or two years after letters granted, in *New Hampshire* (1891 P. S. c. 191, § 6); or three years after letters granted, in *Kentucky* (1894 Stats. § 2527); or in one year after his death, if action had been already begun, in *Arkansas* (1884 Dig. Stats. §§ 4497–99), *Colorado* (1891 An. Stats. § 2617); or eighteen months after his death, or, in the case of a decedent dying in New York, one year after letters, granted more than six months after his death. *New York* (Code C. P. § 403).

It has been held that under the general Statute of Limitations the time between the debtor's death and the issue of letters on his estate is not to be reckoned, Parker *v.* Fassit, 1 Harr. & J. 337; Grubb *v.* Clayton, 2 Hayw. (N. C.) 378; Scott *v.* Atwell, 63 Ga. 764; Long *v.* Clegg, 94 N. C. 763; Estate of McCandless, 61 Pa. St. 9; and in other states that a statute already running at his death is not extended. Keyser's Appeal, 124 Pa. St. 80; Conant *v.* Hill, 12 Vt. 285.

In New York, the statute is not stayed between the death of the decedent and the letters granted, Church *v.* Olendorf, 49 Hun 439; but is extended for eighteen months, Scovil *v.* Scovil, 45 Barb. 517; Church *v.* Olendorf, *ubi supra;* although action must now be brought within one year after letters on claims otherwise barred, Scovil *v.* Scovil, *ubi supra;* and see Sanford *v.* Sanford, 62 N. Y. 553; Matter of Kendrick, 107 N. Y. 104. It is not necessary to plead the eighteen-months' statute specially. Benjamin *v.* De Groot, 1 Denio 151.

The effect of the special statutes and stay laws in other states has been, in Alabama, to extend the general limitation not more than six months in all at the utmost, Lee *v.* Downey, 68 Ala. 98; which period is, however, to be added to the suspension caused by the pendency of the war, Steele *v.* Steele, 64 Ala. 438; in Georgia, to suspend and extend the general Statute of Limitations during the twelve-months' stay of proceedings, but not between decedent's death and letters issued, Pendleton *v.* Andrews, 70 Ga. 306; in Maryland, to extend the statute to the end of the eighteen-months' period if necessary, but in no case to shorten it to that time, Code, §§ 210, 217; Harris *v.* Rice, 66 Md. 267; in Kentucky, to extend the limitation against the administrator's surety by the six-months' stay of action against the administrator, Murrell *v.* McAllister, 79 Ky. 311; in Minnesota, to extend the general limitation to the end of one year after decedent's death (where letters are issued within the first six months), St. Paul Trust Co. *v.* Sargent, 44 Minn. 449; in Mississippi, to extend the general limitation until the end of eighteen months from letters granted, 1871 Code, §§ 1184, 2162, 2170; Adams *v.* Williams, 57 Miss. 38; or by adding to it the full term of the stay (nine months), as well as the suspension caused by the war, Sivley *v.* Summers, 57 Miss. 712; in Tennessee, to extend the general limitation for the interval (not exceeding six months) between death of decedent and letters granted, and for a further term of six months after letters granted, Bright *v.* Moore, 89 Tenn. 186; and to add the latter

term of six months to the limitation forbidding suits after two years from letters granted, Maynard *v.* May, 2 Coldw. 44; in Wisconsin, to extend the general limitation for the term of eighteen months after decedent's death. Lightfoot *v.* Cole, 1 Wis. 27.

Extension by presentment and allowance. The statute requires formal presentment of claims in nine months, in *New Jersey* (1877 Rev. 764, § 59); in one year; in *Colorado* (1891 An. Stats. § 4780), *Georgia* (1882 Code, § 2530), *Indiana* (1888 R. S. § 2465), *Iowa* (1888 R. C. § 2421), *Massachusetts* (1882 P. S. c. 136, §§ 2–5), *Texas* (1888 R. S. Art. 2015); in eighteen months, in *Alabama* (1886 Code, 2081); in two years, in *Arkansas* (1884 Dig. Stats. § 98); *Illinois* (1891 R. S. c. 3, § 70), *Michigan* (1882 An. Stats. §§ 5892–93), or eighteen months; *Missouri* (1889 R. S. § 184), *New Hampshire* (1891 P. S. c. 191, § 2), *Wisconsin* (1889 An. Stats. § 3840), or one year; in three years, in *Kansas* (1889 G. S. § 2865); in a time varying with the amount of the claim, or other circumstances, in *California* (Code C. P. § 1491), four to ten months; *Connecticut* (1888 G. S. §§ 581, 586), six to twelve months; *Florida* (1892 R. S. §§ 1910–11), one to two years; *Nebraska* (1893 C. S. c. 23, § 217), six to eighteen months; *Vermont* (1880 R. L. §§ 2121–25), six to eighteen months; in five years after testator's death, or six to twelve months after notice, in *Minnesota* (1891 G. S. § 5715); in two years or, in the case of non-residence, three years, and in one year after disability ended, in *Tennessee* (1884 Code, § 3117). In these states the time runs variously from the death of the decedent, the granting of letters, or the giving of notice. See Vol. II. p. 232, n., *et seq.*

In some of the states the Statute of Limitations ceases to run against, or affect, a claim after presentment and allowance until the discharge of the executor, Dohs *v.* Dohs, 60 Cal. 255; Code C. P. § 1569; Johnston *v.* Waters, 111 U. S. 640 (a Louisiana case); or between the presentation of the claim and its judicial rejection. Nally *v.* McDonald, 66 Cal. 530. So, a claim once allowed against an insolvent estate, and sharing the dividends paid, will not be barred by the lapse of twenty years, Wright *v.* Dunklin, 83 Ala. 317; or more, Bancroft *v.* Andrews, 6 Cush. 493; or on suit promptly brought, on a subsequent refusal to pay, many years afterward and before settlement of the estate, Robbins *v.* Coffing, 52 Conn. 118; although a shorter time (under a ten-year limitation) will bar a claim, where such period has been allowed to elapse after the settlement and discharge of the administrator before bringing suit. Brown *v.* Hanauer, 48 Ark. 277.

In some states the statute bars all claims which are not prosecuted, although the claim has been duly presented, Walker *v.* Cheever, 39 N. H. 420; or filed, Bayless *v.* Powers, 62 Ia. 601; or judicially allowed and not paid for want of assets, Thurston *v.* Lowder, 47 Me. 72; and even notwithstanding allowance by the Probate Court and retention of sufficient funds for this and other claims enumerated and shown in the account. Market Co. *v.* Beckley, 4 Mackey 163. So, a claim which has been allowed may lose its lien on property in adverse possession before the Statute of Limitations runs against it in favor of the estate. Fort *v.* Blagg, 38 Ark. 471.

And if the claim was barred by the statute, the allowance must be attacked and set aside in a direct proceeding by the heirs, Howard *v.* Johnson, 69 Tex. 655; or by the administrator himself. Cone *v.* Crum, 52 Tex. 348. And the Statute of Limitations against a note of the intestate cannot be stayed by judgment of the Probate Court, where it has no jurisdiction. Wilson *v.* Wilson, 29 S. C. 260.

An action lies under the Statute of Nonclaim for two years after letters, though barred by the Statute of Limitations allowing a shorter time. Walker *v.* Byers, 14 Ark. 246. And the Statute of Limitations may be suspended during a life estate, while the Statute of Nonclaim runs. Worthington *v.* De Bardlekin, 33 Ark. 651. And in an action on a bond against a deceased surety who dies before the expiration of the general Statute of Limitations, this statute may be superseded and controlled by the Statute of Nonclaim. Bradley *v.* Vail, 48 Conn. 375.

Suit on rejected claims. In some of the United States a short period is fixed within which action must be brought upon a claim against the estate after its formal rejection. Such suit must be brought within three months, in *New Jersey* (1877 Rev. 765, § 63), *Texas* (1888 R. S. Art. 2028); within four months, in *Connecticut* (1888 G. S. § 583); within six months, in *New York* (Code C. P. § 1823), *North Carolina* (1883 Code, § 1427), *Ohio* (1890 R. S. § 6116); or within nine months, in *Maryland* (1888 P. G. L. Art. 93, § 107); within three months, in *California* (Code C. P. § 1498), or within two months after it becomes due; within one year, in *Massachusetts* (1882 P. S. c. 136, § 14).

These statutes have been held not to be statutes of limitation. Stanfield *v.* Neill, 36 Tex. 688; Cotton *v.* Jones, 37 Tex. 34. And the action may be brought within the designated time, although the general Statute of Limitations has in the meantime expired. Continental Life Insurance Co. *v.* Barker, 50 Conn. 567. But if the action is not brought within the required time, it will not be waived by a subsequent agreement for reference of the claim, Flynn *v.* Diefendorf, 51 Hun 194; nor revived by its subsequent allowance by the administrator, Burks *v.* Bennett, 62 Tex. 277; nor by a new presentment to the successor of the original representative. McKim *v.* Doane, 137 Mass. 195.

In reckoning the time for action the day of rejection is to be excluded, Hunter *v.* Lanius, 82 Tex. 677; and the time will run from the indorsement of the rejection on the claim, in California. Bank *v.* Shoemaker, 67 Cal. 147. The defense may be raised by demurrer if the fact is apparent on the complaint, Cotton *v.* Jones, 37 Tex. 34; or it may be specially pleaded, strict proof being required as to due presentment and formal rejection. Coburn *v.* Harris, 53 Md. 367.

The creditor will not be put to his action by rejection upon an insufficient presentment, Henry *v.* Roe, 83 Tex. 446; or presentment of a claim of different form and amount, Robeson *v.* Niles, 7 Mackey 182; nor by a deliberative and indecisive rejection. Barsalow *v.* Wright, 4 Bradf. 164.

The statute will be satisfied, however, by an action brought, although the action is afterward amended, Vauderslice *v.* Mathews, 79 Cal. 273; or even dismissed as an action in tort and begun after the time, on a fresh presentment, as an action on contract, Titus *v.* Poole, 60 Hun 1; but not by an action brought before a court having no jurisdiction. Matter of Radde, 2 Connoly 293.

Notice of appointment. This is required by statute in many states. See Vol. II. p. 231, n., *ubi supra.* Without such notice the executor or administrator in many states cannot claim the relief of the special Statute of Limitations. Smith *v.* Hall, 19 Cal. 85; Knowles *v.* Whaley, 15 R. I. 97; Bryan *v.* Mundy, 17 Mo. 556; Clarke *v.* Collins, 31 Mo. 260. He must show that he has given notice as required by the statute, Lawrence *v.* Norfleet, 90 N. C. 533; Love *v.* Ingram, 104 N. C. 600; and in the statutory form. Dyer *v.*

Walls, 84 Me. 143. An administrator *de bonis non* is entitled to the benefit of the special limitation (two years) if he has given due notice of his appointment. Fisher *v.* Metcalf, 7 Allen 209. But the general Statute of Limitations is not affected by want of the notice. Corliss Engine Co. *v.* Schumacker, 109 Mass. 416; York's Appeal, 110 Pa. St. 69; Lancey *v.* White, 68 Me. 28.

What actions are barred. The special Statutes of Limitations are not retrospective, and will not be applied, when the administrator has already qualified and given bond, to shorten the time of suit against him, Hildreth *v.* Marshall, 7 Gray 167; or where the cause of action is already barred, to lengthen the time, Butler *v.* Johnson, 111 N. Y. 204; nor to the revival of actions pending at the death of the intestate, Bank of Brighton *v.* Russell, 13 Allen 221; especially where the claim is in favor of the United States Government. United States *v.* Houston, 48 Fed. Rep. 297.

The statute will run against an action for devastavit by negligence in collecting assets, but only from the time of the loss, Harrington *v.* Keteltas, 92 N. Y. 40; or for negligence in suffering lands of the decedent to be lost by adverse possession. Wheeler *v.* Bolton, 54 Cal. 302.

In an action on the administration bond for failing to pay a claim when ordered by the court, the statute will run from the making of the order. Avery *v.* Miller, 81 Mich. 85. In like manner, the statute will run against an action on a guardian's bond against the representatives of the deceased guardian, Cox *v.* Cox, 84 N. C. 138; or against the representatives of the administrator's deceased surety. Sigler *v.* Vaughan, 16 Lea 346. For other cases, see Vol. I. p. 652, n., *ubi supra.*

Partnership debts. The general Statute of Limitations has been held not to apply to the liability of a deceased partner to the survivor for partnership debts assumed by the deceased, Clanton *v.* Price, 90 N. C. 96; but the Statute of Nonclaim will bar such an action. Morgan *v.* Morgan, 68 Ala. 80.

Executor's claim. The special limitation applies to a debt due from the estate to the executor or administrator himself; and the statute is suspended from the death of the decedent to the settlement of the executor's account, in New York. Matter of Powers, 124 N. Y. 361; Matter of Macomber, 31 N. Y. S. R. 962; S. C. 2 Connoly 279; Matter of Strickland, 2 Connoly 10; but see Treat *v.* Fortune, 2 Bradf. 116; and in some states until the discharge of the personal representative. Semmes *v.* Young, 10 Md. 242; Mathews *v.* Mathews, 66 Miss. 239; McLaughlin *v.* Newton, 58 N. H. 531. So, for advances made by the executor to pay the debts of the estate. Ames *v.* Jackson, 115 Mass. 508. And the statute will not run until after a demand on a claim of the executor for securities held and converted by the decedent, Brooks *v.* Brooks, 4 Redf. 313; or for moneys collected for him by the decedent. Boughton *v.* Flint, 74 N. Y. 476.

But under other statutes it has been held that the administrator's own claim will be barred where he has made no mention of the claim. Lunsford *v.* Jarrett, 2 Lea 579. So, in Pennsylvania, the administrator's claim for advances, although advances made by the guardian of the decedent's minor children for the same purpose would not be barred, Estate of Merkel, 154 Pa. St. 285; and if the principal (owing to another) is barred, the interest (which had been advanced by the executor and constituted a claim of his) will go with it. Jones *v.* Orton, 65 Wis. 9.

Debt of executor. Conversely, the Statute of Limitations will not, in general, bar a claim against the executor or administrator due to the decedent,

Baucus *v.* Stover, 89 N. Y. 1, affg. 24 Hun 109; or to the firm of which they were both members. Whiting *v.* Leakin, 66 Md. 255.

Action between co-executors'—successive administrators. The Statute of Limitations will run against an action between co-administrators. Lawrence *v.* Norfleet, 90 N. C. 533.

So, it will run against an action brought by the administrator *de bonis non* against the estate of his predecessor, Roup *v.* Bradnor, 19 Hun 513; from the time of the plaintiff's own appointment, Worthy *v.* McIntosh, 90 N. C. 536; Salter *v.* Blount, 2 Dev. & B. Eq. 218; McCustian *v.* Ramey, 33 Ark. 141; but not until his appointment, although the full time of the statute may have elapsed since the death of his predecessor. Cooley *v.* Patterson, 49 Me. 570. If he has died without accounting, even after a prolonged administration, the lapse of time will not bar an application on the part of his successor for such account. Matter of Latz, 33 Hun 618. But after the lapse of the statutory period for an action by the administrator *de bonis non* against his predecessor's estate, the claim will be presumed to have been paid. Glover *v.* Flower, 95 N. C. 57.

Actions after-accrued. Where the cause of action does not accrue until after the special term of limitation has expired, the statute is not held to apply, Dugger *v.* Oglesby, 99 Ill. 405; *e. g.*, on an obligation maturing after testator's death, Sivley *v.* Summers, 57 Miss. 712; or after his death and before letters issued. Metcalf *v.* Grover, 55 Miss. 145. So, in an action by a surety against the estate of the principal, for moneys paid as surety after the principal's death, the statute will run only from the payment of the money. Burton *v.* Rutherford, 49 Mo. 255; Marshall *v.* Hudson, 9 Yerg. 57. But under the Massachusetts statute an action cannot be brought for a breach of the decedent's covenant happening after the lapse of the statutory time, Holden *v.* Fletcher, 6 Cush. 235; or on a Probate Court decree rendered after the lapse of such time for the payment of the balance due from the estate of a deceased guardian to his ward. Bemis *v.* Bemis, 13 Gray 559. So the statute will run against a bill in equity filed by a corporation against the estate of a decedent to enforce his liability as stockholder. New England &c. Bank *v.* Newport Factory, 6 R. I. 154; Atwood *v.* Rhode Island Agricultural Bank, 2 R. I. 191; Sayler *v.* Bates, 15 R. I. 342; although the three years had elapsed before the corporate deficiency was discovered. Atwood *v.* Rhode Island Agricultural Bank, *ubi supra.*

Set-off. By statute in some of the United States a barred claim against the estate of the deceased is not available as a set-off to an action brought by the personal representative. *Michigan* (1882 An. Stats. § 5896), *Minnesota* (1891 Stats. § 5719), *Nebraska* (1893 C. S. c. 23, § 221), *Wisconsin* (1889 An. Stats. § 3841). But in the absence of a statute to that effect such set-offs are admissible, Huffman *v.* Wyrick, 5 Ind. Ap. 183; Ware *v.* Hawley, 68 Ia. 633; although the rule is different as to the Statute of Nonclaim. Patrick *v.* Petty, 83 Ala. 420.

Action for legacy—New York law. Under the law as it was prior to 1880 the statute ran against an action for a legacy from the time of granting letters. Thus, after twelve years no action would lie. Butler *v.* Johnson, 111 N. Y. 204, revg. 44 Hun 206. But an action may now be brought within one year after account settled (although the account be deferred twenty-three years after letters granted and five years after the legacy was payable), Matter of Collins, 3 Dem. 30; Code C. P. § 1819; but this act does not apply to

proceedings by the legatee for an accounting. Matter of Dunham, 22 Abb. N. C. 479. And such proceedings must be brought within six years after the legacy became payable (which was one year after letters granted). Estate of Clayton, 17 Civ. Pro. 68. The Statute of Limitations runs against legacies alike in equity and at law, unless they are charged on the land, Souzer *v.* De Meyer, 2 Paige 574; but a legacy charged on the land will not be barred by the six-year limitation, Shannon *v.* Howell, 36 Hun 47; but see Loder *v.* Hatfield, 71 N. Y. 92; but is barred in ten years. Scott *v.* Stebbins, 91 N. Y. 605. So, an equitable action may be brought within ten years after it accrues, against executors and trustees who have not accounted, for the balance due on a legacy. Scott *v.* Stebbins, 27 Hun 335. If the legacy is payable at the age of twenty-one years, the statute will run against it from that time. Smith *v.* Remington, 42 Barb. 75. But the statute will not run against a legacy payable to a woman at the age of twenty-one or on her marriage, where she marries before reaching that age and remains under disability. Wood *v.* Riker, 1 Paige 616. But where there was no trust and the legatee was already married before the testator's death, she cannot sue for such legacy after thirty years, Cole *v.* Terpenning, 25 Hun 482; payment being presumed after such lapse of time. Sweeney *v.* Sweeney, 32 N. Y. S. R. 156.

Other states. But the Statute of Limitations is, in general, no bar to an equitable suit for a legacy, Irby *v.* McCrea, 4 Desaus. 422; Bonner *v.* Young, 68 Ala. 35; Sparhawk *v.* Buell, 9 Vt. 411; Hedges *v.* Norris, 5 Stew. (N. J.) 198; Cartwright *v.* Cartwright, 4 Hayw. (Tenn.) 134; and the statute provides that there shall be no limitation to the action of a legatee, in *Massachusetts* (1882 P. S. c. 136, § 19). But payment will be presumed after the lapse of twenty years, Bonner *v.* Young, 68 Ala. 35; State *v.* Grigsby, 92 Mo. 419 (twenty-two years); Shearin *v.* Eaton, 2 Ired. Eq. 292 (thirty-four years); Summerville *v.* Holliday, 1 Watts 507 (thirty-four years); Burkhead *v.* Colson, 2 Dev. & B. Eq. 77 (forty years); Anderson *v.* Burwell, 6 Gratt. 405 (fifty-four years); although not before that time. Sparhawk *v.* Buell, 9 Vt. 411; Girard *v.* Futterer, 84 Ala. 323. So, in Pennsylvania, after twenty-one years, if there has been no demand, part payment, or acknowledgment, although the legacy was charged on the land. Wingett's Appeal, 122 Pa. St. 486. An abandonment of the claim for a legacy has been, however, presumed after the lapse of nearly twenty years. Hamlin *v.* Mebane, 1 Jones Eq. 18. And the action will be barred twenty-four years after a direction to invest the fund for the legatee. *Ex parte* Epting, 22 S. C. 400. If the legacy is payable on a future event, the statute will not begin to run until the happening of the event, Effinger *v.* Hall, 81 Va. 94; nor, in general, until the end of a pending contest over the probate of the will. State *v.* Adams, 71 Mo. 620. In State *v.* Grigsby, 92 Mo. 419, it was held that the Statute of Limitations runs against an action on the administration bond by the residuary legatee from the time when all other trusts in the will are executed and the assets are applicable to the residue. Where the court has ordered the payment of the legacy, and the executor has transferred the estate to a third party, the statute will run in six years against an action by the legatee to charge the property transferred, Sowles *v.* First National Bank, 54 Fed. Rep. 564 (Vt.); or generally to enforce a trust securing the legacy of the yearly income, within six years after the last payment of the annual interest. May

v. Coleman, 84 Ala. 325. And it is not laches on the part of a devisee, who claims a right to recover under the statute for improvements made on land under a parol gift from the testator, to delay renunciation of his devise or proceeding for three years in expectation of an action by the executor or legatee to enforce a legacy charged on the land. Vann *v.* Newsom, 110 N. C. 122. A suit for a specific legacy has been held not to be barred seventeen years after assent, Nelson *v.* Cromwell, 11 Gratt. 724; but it is otherwise after a lapse of thirty years. Tinnen *v.* Mebane, 10 Tex. 246; Burkhead *v.* Colson, 2 Dev. & B. Eq. 77. On the other hand, even a longer delay has been held not to bar the action, where the legatee lived with the devisee on whose lands it was charged and the land was sold, shortly before the action, expressly subject to the payment of the legacy. Ogle *v.* Taylor, 49 Md. 158.

If the administrator has paid all the debts and has sufficient assets remaining to pay legacies, it is not necessary to wait the statutory term of two years after the giving of the administration bond before commencing an action for a general legacy. Brooks *v.* Lynde, 7 Allen 64. And after the lapse of one year, if there are assets in the hands of the executor, and no other and superior claims, a residuary legatee may maintain an action for payment of the residuary legacy, even though the estate has not been finally settled. Smith *v.* Lambert, 30 Me. 145. But it is premature to sue for a legacy pending an application from the decree for probate of the will. Hantz *v.* Sealy, 6 Binn. 405.

The law staying actions for a year does not, however, affect a bill in equity for an injunction against the payment of a legacy. Wolnack *v.* Greenwood, 6 Ga. 299.

Against distributive shares. In like manner the general Statute of Limitations does not run against an action for a distributive share, Fretwell *v.* McLemore, 52 Ala. 124, overruling Harrison *v.* Harrison, 39 Ala. 489; the rights of distributees being enforceable as a trust against the personal representative. Decouche *v.* Savetier, 3 Johns. Ch. 190. But under the New York statute no suit can be brought fifteen years after the right of action accrued. Matter of Dunham, 1 Connoly 323. Lapse of time, while not a bar to the action strictly speaking, raises a presumption of satisfaction after twenty years. Hargis *v.* Sewell, 87 Ky. 63; Bird *v.* Graham, 1 Ired. Eq. 196.

In some states the statute runs against the distributee from the date of the order for distribution, Bridgforth *v.* Payne, 62 Miss. 777; State *v.* Blackwell, 20 Mo. 97; even though the distributee had no notice of his rights. Biays *v.* Roberts, 68 Md. 510. The statute has been held to run in favor of the administrator from the date of his discharge, Roberts *v.* Johns, 24 S. C. 580; or, if the administrator retains a balance in his hands, from the time of the distributee's demand upon him, Woody *v.* Brooks, 102 N. C. 334; or (where the distributee had been absent for many years and was presumed to be dead, and her share had been paid to her sisters) from her knowledge of the payment. McCartee *v.* Camel, 1 Barb. Ch. 455. So, the lapse of thirty years will bar the claim of a child against her stepfather as administrator for the share of her deceased mother's estate. Succession of Sarrazui, 34 La. An. 1168.

And the statute runs from the time of settlement of the estate in favor of the sureties on the administration bond, Vaughan *v.* Hines, 87 N. C. 445; Williams *v.* Flippin, 68 Miss. 680; or from the time of the youngest distributee arriving at the age of twenty-one, although the estate was not settled until afterward, Commonwealth *v.* Ham-

mond, 10 B. Mon. 62. But a special bond given to a particular distributee for her share (then due) will be barred by the general Statute of Limitations running from its date. Tilson *v.* Davis, 32 Gratt. 92.

A distributee cannot sue, in general, until after the time allowed for the administration of the estate, *e. g.*, nine months, in Kentucky, Commonwealth *v.* Hammond, 10 B. Mon. 62; or four years, in Ohio. Dawson *v.* Dawson, 25 O. St. 443.

Statute of Limitations — Who may plead. Where action is commenced and one of two executors served with process before the statute has barred the action, it cannot be pleaded by either executor. Burgie *v.* Sparks, 11 Lea 84. But an action may be barred against the representatives of one deceased joint obligor and be still maintainable against the representatives of the other. Buie *v.* Buié, 2 Ired. 87. But if the statute has run in favor of the surviving partner (who is primarily liable for the partnership debts) it will bar an action against the representatives of the deceased partner. McNaught *v.* Bostick, 71 Ga. 782. So, if an action has become barred as to the administrator of an estate, it cannot be maintained (except as to new assets) against his successor. Veazie *v.* Marrett, 6 Allen 372. On the other hand, where an executor could not plead the Statute of Limitations against his co-executors as to a trust fund in his possession, his personal representatives cannot plead it. Fox *v.* Tay, 89 Cal. 339.

But, as between the representatives of a deceased debtor and his surety, the special statute in favor of decedents is personal to the representatives (in the case of a deceased guardian), and cannot be pleaded by the sureties of the decedent, Davis *v.* Davis, 5 Lea 179; nor avail the surety to protect property received by him from the principal debtor for his indemnity, Smith *v.* Gillam, 80 Ala. 296; but the estate of a deceased surety is entitled to the defence of the special Statute of Limitations. Glass *v.* Woolf, 82 Ala. 281.

The Statute of Nonclaim may generally be pleaded by heirs and next of kin, as well as by the personal representative, Farris *v.* Stoutz, 78 Ala. 130; see too, Vol. III. p. 207, n., *ubi supra.* And the special limitation of actions against representatives of a deceased debtor includes heirs in some states, and is strictly construed, to bar even a cause of action discovered after the period had elapsed. Fisher *v.* Tuller, 122 Ind. 31. On the other hand, the statute making debts a lien on decedent's lands for a specified time is not a limitation of the creditor's suit against heirs and devisees. Fisk *v.* Jenewein, 75 Wis. 254.

Waiver of Statute. In general, a claim that is once barred cannot be paid by the personal representative, nor can the statute be waived, McGee *v.* McDonald, 66 Mich. 628; McHugh *v.* Dowd, 86 Mich. 412; Wise *v.* Hogan, 77 Cal. 184; especially where the claim is his own claim against the estate, Godbold *v.* Vance, 14 S. C. 458; although this does not apply to advances made by him after the expiration of the statutory time for payment of debts, which he had previously promised to pay, if the creditor would not sue. Ames *v.* Jackson, 115 Mass. 508. As to waiver of Statutes of Nonclaim, see Vol. II. p. 246, n., *ubi supra.* So, even a judgment debt which is presumed to have been paid after twenty years cannot be revived by the administrator. Vischer *v.* Wesley, 3 Dem. 301. A distinction is, however, made sometimes between the right of the creditor and his remedy, and where the statute is merely a bar to the remedy, it has been held that the administrator may waive it. Joyce *v.* Hart, 27 Ohio L. J. 144. So, where the statute has expired

after the death of the decedent. Ray *v.* Strickland, 89 Ga. 840; Code, § 2542. On the other hand, payment of firm debts by a surviving partner may be allowed as a set-off in the partnership account as against the deceased partner, although not made by the survivor until after the limitation had expired against the estate of the decedent. Goldthwait *v.* Day, 149 Mass. 185.

In like manner the executor's statutory right to have all suits stayed for six months relates to the remedy only, and may be waived by him, and such waiver will be presumed from his allowing a suit begun within that time to go to judgment or decree. Boynton *v.* Sandford, 1 Stew. (N. J.) 184.

Statute must be pleaded. In some states an executor or administrator is not bound to plead the Statute of Limitations, Ritter's Appeal, 23 Pa. St. 95; Estate of McFarland, 9 Pa. St. 149; Pursel *v.* Pursel, 1 McCart. 514; Walter *v.* Radcliffe, 2 Desaus. 577; Trimble *v.* Marshall, 66 Ia. 233; Miller *v.* Dorsey, 9 Md. 317; Stiles *v.* Smith, 55 Mo. 363; Carder *v.* Primm, 47 Mo. Ap. 301; Leigh *v.* Smith, 3 Ired. Eq. 443; and this is provided by the statute, in *Maryland* (1888 P. G. L. Art. 93, § 98). He is not even obliged to plead it, although requested by parties in interest to do so, Estate of Smith, 1 Ashm. 352; but he must use care and diligence as in other cases. Teague *v.* Corbitt, 57 Ala. 529. Thus, he need not plead it, where the personal property is sufficient for all the claims. Pollard *v.* Scears, 28 Ala. 484. It is said that he may bind himself, but not the heirs or devisees, by failing to plead the statute, or by waiving or extending it by a new promise. Scott *v.* Ware, 64 Ala. 174.

But in other states it is held to be his duty to plead the statute, Butler *v.* Johnson, 111 N. Y. 204; Smith *v.* Pattie, 81 Va. 654; Hoskins *v.* Sheddon, 70 Ga. 528; Hall *v.* Woodman, 49 N. H. 295; especially against his own claim, Rector *v.* Conway, 20 Ark. 79; and against claims barred before the death of the decedent. Rogers *v.* Wilson, 13 Ark. 507. And he cannot file a bill in equity to marshal the assets and afterward plead the statute to some claims and waive it as to others. Jordan *v.* Brown, 72 Ga. 495. A distinction is made between the Statutes of Nonclaim and Limitation in some states, where the courts hold that an executor must plead the Statute of Nonclaim, but may use his discretion as to the Statute of Limitations. Amoskeag Manufacturing Co. *v.* Barnes, 43 N. H. 25; Stiles *v.* Smith, 55 Mo. 363; Wiggins *v.* Lovering, 9 Mo. 262. He must resist an application for sale of real property for claims that are barred, Lamson *v.* Schutt, 4 Allen 359; Hodgdon *v.* White, 11 N. H. 216; and see Vol. III. p. 175, n., *ubi supra.* And where he fails to set up the Statute of Limitations, he will not be allowed upon his accounting for the amount paid. Matter of Hill, 2 Connoly 25; Woods *v.* Elliott, 49 Miss. 168; Sanderson *v.* Sanderson, 17 Fla. 820. And an heir may set it up on settlement of the administrator's account. Stillman *v.* Young, 16 Ill. 318.

Statute—How pleaded. Distributees may compel the administrator to plead the Statute of Limitations, notwithstanding his acknowledgment of the debt, Head *v.* Manners, 5 J. J. Marsh. 255; but see, *contra*, Leigh *v.* Smith, 3 Ired. Eq. 443; or the statute may be pleaded by any party interested, Butler *v.* Johnson, 111 N. Y. 204; Ritter's Appeal, 23 Pa. St. 95; even without the concurrence of the personal representative. Partridge *v.* Mitchell, 3 Edw. Ch. 180. It may be pleaded by a judgment creditor of a distributee. Smith *v.* Pattie, 81 Va. 654. But a party in interest cannot stand by and suffer judgment to be rendered on a barred claim against the executor and then come in

to open the judgment and plead the statute. In such case he will be bound by the judgment, Walter *v.* Radcliffe, 2 Desaus. 577; or by a payment made by the executor, Ritter's Appeal, 23 Pa. St. 95; and cannot hold the administrator's sureties liable where, after pleading the statute, the administrator failed to prosecute his plea and suffered judgment against him in the action. Robinson *v.* Hodge, 117 Mass. 222. So, a sale of lands made for such claim will not be afterward set aside on behalf of creditors by a bill in equity, the claim having been allowed without contest. Trimble *v.* Marshall, 66 Ia. 233.

The statutory bar may be set up by plea or answer, or by exception to the allowance of a claim, Leith *v.* Carter, 83 Va. 889; or, if the lapse of time appears on the complaint, by demurrer. Farris *v.* Stoutz, 78 Ala. 130; Dowell *v.* Tucker, 46 Ark. 438. So, it will be sufficient, though pleaded informally, *e. g.*, as a bar "against the collection" of the claim, Proctor *v.* Proctor, 105 N. C. 222; or that it was not sued "within the time allowed by law." Jones *v.* Jones, 41 O. St. 417. But a misstatement of the time is bad, Epperson *v.* Hostetter, 95 Ind. 583; although such mistake has been held to be curable by evidence of the lapse of the statutory period. Perry *v.* Ellis, 62 Miss. 711. In Indiana, it need not be specially pleaded, but may be proved under the general issue. Zeller *v.* Griffith, 89 Ind. 80; Knippenberg *v.* Morris, 80 Ind. 540; 1881 R. S. § 2324. And the Probate Court may take cognizance of the bar of the statute, without any formal plea, on the application of a creditor for the allowance of his claim. York's Appeal, 110 Pa. St. 69.

Extension of statute—For Assets. Where the administrator or executor still retains assets of the estate in his hands, the Statute of Limitations cannot be set up by him as a defense against creditors, Little *v.* Duncan, 89 N. C. 416; Rogers *v.* Grant, 88 N. C. 440; Cooper *v.* Cherry, 8 Jones 323; Morris *v.* Cain, 39 La. An. 712; and see *New Jersey* (1877 Rev. 765, § 66); O'Neil *v.* Freeman, 16 Vroom 208; (as to bar for non-presentment) or legatees. Kent *v.* Dunham, 106 Mass. 586; Bailey *v.* Shannonhouse, 1 Dev. Eq. 416; or distributees. Harriet *v.* Swan, 18 Ark. 495.

Under the statutes of special limitation in some states an exception is made of newly discovered assets, which may still be reached by a creditor otherwise barred. Thus, in *Massachusetts* (1882 P. S. c. 136, §§ 11, 12), a fresh start is made and a new limitation begins with assets discovered after the lapse of the two years allowed for administration of the estate and suits of creditors. And as to the exception in the Statutes of Nonclaim, see Vol. I. p. 626, n., *ubi supra.* Under these statutes the proceeds of decedents' lands sold for the payment of debts after the expiration of the statutory term do not constitute "new assets," Chenery *v.* Webster, 8 Allen 76; Favorite *v.* Booker, 17 O. St. 548; nor do notes which had been released in testator's lifetime for other substituted securities, and were after the lapse of the statutory time reinstated by a decree setting aside the release, rendered in a suit begun by the testator himself, although the substituted securities (and not the notes) had been inventoried by the exe cutor. Gould *v.* Camp, 157 Mass. 358. On the other hand, a government indemnity received by an administrator under a public treaty more than twenty years after the settlement of his accounts is new assets, White *v.* Swain, 3 Pick. 365; see, however, Thurston *v.* Lowden, 40 Me. 197.

Extension—For disability—Mistake. Where the Statute of Nonclaim makes no exception for disabilities (as in Arkansas), it will run against a nonresident infant without guardian in the

state. Morgan *v.* Hamlet, 113 U. S. 449. And the Statute of Limitations will bar an infant legatee when his guardian's action against the executor is barred, Culp *v.* Lee, 109 N. C. 695; or against infant legatees for a joint legacy, when any one of the co-legatees is barred. Traweck *v.* Kelly, 60 Miss. 652. And the statute will run against an infant ward and in favor of the estate of a deceased surety of the guardian as in the case of other decedents' estates. Favorite *v.* Booker, 17 O. St. 548. So, in favor of the heirs of the deceased surety. Hall *v.* Bumstead, 20 Pick. 2.

In some of the United States the statute makes an exception where the administrator is absent from the state, Jennings *v.* Bowder, 24 Tex. 192; but not if he can be reached in a suit by the creditor by publication. French *v.* Davis, 38 Miss. 218; Taylor *v.* McGill, 6 Lea 294. And where the general statute fails to run against a debtor in his lifetime by reason of his continued nonresidence, claims will not be barred after his death until the special statute has run out. Christophers *v.* Garr, 6 N. Y. 61.

In *New Hampshire*, the statute makes an exception when justice and equity require, as in case of mistake and where there is no culpable negligence (1872 Laws, c. 7, § 2). Webster *v.* Webster, 58 N. H. 247. So, in *Massachusetts* (1882 P. S. c. 136, § 10).

Extension of statute—By acknowledgment. The Statute of Limitations cannot, in general, be barred by the executor's or administrator's acknowledgment of the claim, Thompson *v.* Peter, 12 Wheat. 565; Wells *v.* Child, 12 Allen 336; Peck *v.* Botsford, 7 Conn. 172; Knox *v.* McCall, 1 Brev. 531; Hoskins *v.* Sheddon, 70 Ga. 528; Dickson *v.* Compton, 24 La. An. 83; Beatty *v.* Tete, 8 La. An. 130; whether the debt is already barred by the statute, Fritz *v.* Thomas, 1 Whart. 66; or not, Steel *v.* Steel, 12 Pa. St. 64. So, where the Probate Court has adjudged the claim to be barred. Crabtree *v.* Graham, 81 Ga. 290. So, the administrator's acknowledgment of a claim that is already barred at the decedent's death will take it out of the statute as against his heirs and devisees. Stark *v.* Hunton, 2 Gr. Ch. 300.

But the acknowledgment of a claim which is not barred already will prevent the statute from running against it before that time, and will amount to an extension of the time. Baxter *v.* Penniman, 8 Mass. 133; Chambers *v.* Fennemore, 4 Harring. 368. So, the confession of a judgment is an acknowledgment of the debt, and the statute will run from that time. Succession of Mansion, 34 La. An. 1246. So, the admission or recognition of the claim in the administrator's account, Twendle *v.* De Bouchel, 34 La. An. 753; Buchanan *v.* Buchanan, 4 Strobh. 63; or in a petition for sale of lands for debts. Vann *v.* Sanders, 8 Baxt. 294.

But an answer of the executor in the suit of another creditor that the judgment in question was prior to his judgment is not such admission of the other judgment as to stay the running of the statute against it. Matter of Kendrick, 107 N. Y. 104.

Promise of executor. A promise to pay on the part of the executor or administrator will not, in general, take a debt out of the special Statute of Limitations in favor of decedent's estate. Croswell on Exrs. § 736; Brown *v.* Anderson, 13 Mass. 201; Wells *v.* Child, 12 Allen 333; Littlefield *v.* Eaton, 74 Me. 516; Reynolds *v.* Hamilton, 7 Watts 420; Preston *v.* Cutler, 64 N. H. 461; Probate Judge *v.* Ellis, 63 N. H. 366; Amoskeag Manufacturing Co. *v.* Barnes, 48 N. H. 25; Bingaman *v.* Robertson, 25 Miss. 501; Patterson *v.* Cobb, 4 Fla. 481. See too, Vol. II. p.

246, n., *ubi supra.* And a creditor may set up the statute, notwithstanding such promise by the administrator. Oates *v.* Lilly, 84 N. C. 643.

Such promise will, however, take a debt of the decedent out of the general Statute of Limitations, Croswell on Exrs. § 736; Emerson *v.* Thompson, 16 Mass. 431; Preston *v.* Cutler, 64 N. H. 461; *Georgia* (1882 Code, § 2542); although the executor who made it has since died. Townes *v.* Ferguson, 20 Ala. 147. But the new promise must be in writing to take the debt out of the general statute, *New Jersey* (1877 Rev. 595, § 10); Cotter *v.* Quinlan, 2 Dem. 29; Van Winkle *v.* Blackford, 33 W. Va. 573; or out of the statute requiring presentment. Lewis *v.* Champion, 13 Stew. (N. J.) 59. In some states the effect of such promise is confined to debts not yet outlawed, Marietta Savings Bank *v.* Jones, 66 Ga. 286; but in others it extends also to debts barred at the time of the promise. Johnson *v.* Beardslee, 15 Johns. 3. So, the promise of one has been held to take the debt out of the statute as against his co-executors, Shreve *v.* Joyce, 7 Vroom 44; Head *v.* Manners, 5 J. J. Marsh. 255; Cann *v.* Sloan, 25 Md. 575; or as against his co-heirs. Johnson *v.* Beardslee, 15 Johns. 3. The promise may be sufficient to remove the bar of the statute without being sufficient proof of the claim itself, Stoner *v.* Devilbiss, 70 Md. 144; or may bind the personal representative individually, *e. g.*, by a renewal of the decedent's note, and not take the debt out of the statute as against the estate. Amoskeag Manufacturing Co. *v.* Barnes, 48 N. H. 25.

The statute extends the special limitation for any definite delay given at the request of the executor or administrator, in *Tennessee* (1884 Code, § 3118). But this act does not apply to the general Statute of Limitations. Bates *v.* Elrod, 13 Lea 156. For insufficient requests or delay under this statute, see Maloney *v.* Wilson, 9 Baxt. 403; Loyd *v.* Loyd, Id. 406; Langham *v.* Baker, 5 Baxt. 701; Ricketts *v.* Ricketts, 4 Lea 163; Apperson *v.* Pattison, 11 Lea 484.

Effect of part payment. Part payment by the administrator on account of a debt already barred before the death of his intestate will not take the debt out of the statute, McLaren *v.* McMartin, 36 N. Y. 88; although where the claim is still in force at the debtor's death, a part payment by the executor will, in many states, take the debt out of the special limitation, Brewster *v.* Brewster, 52 N. H. 52; or out of the general statute, Semmes *v.* Young, 10 Md. 242; Blackler *v.* Boott, 114 Mass. 24; but not out of the statute requiring presentment within a certain time, Clawson *v.* McCune, 20 Kan. 337; although it may extend the time for proving a claim already filed. Shriver *v.* Holderbaum, 75 Ia. 33. And in some states a part payment will not affect the running of the special limitation. Trott *v.* West, 9 Yerg. 433. So, under the express statutory provision that the total extension shall not exceed six months. Lewis *v.* Ford, 67 Ala. 143.

Effect of testamentary direction. A plain direction to pay a debt takes it out of the Statute of Limitations. Gilbert *v.* Morrison, 53 Hun 442. And the executor may pay a claim which is otherwise barred by express authority of the will, Campbell *v.* Shotwell, 51 Tex. 27; but he cannot pay his own claim under a direction to "pay, if they are proper, just debts barred by the Statute of Limitations." Williams *v.* Williams, 15 Lea 438. A general direction to pay all debts will not prevent a note not yet due at testator's death from afterward becoming barred by the statute. Man *v.* Warner, 4 Whart. 455. And a general direction to pay "all just debts" will not take

particular claims out of the statute, Starke *v.* Wilson, 65 Ala. 576; nor a general bequest to the creditor a different amount without express reference to the debt, Stewart *v.* McFarland, 84 Ia. 55; nor a general testamentary power of sale of land given to the executor and never exercised, Warren *v.* Paff, 4 Bradf. 260; nor a specific provision in a will which is afterward revoked by a later will, containing no such provision. Petrie *v.* Mott, 38 Hun 259.

Where an action begun in the decedent's lifetime has arrested the running of the statute, and abates by reason of his death, the cause of action will not be barred by the statute at the time of the debtor's death. Allen *v.* Roundtree, 1 Speers 80; Bassett *v.* McKenna, 52 Conn. 437. So, the statute may be barred by an action begun after the testator's death, and such action inure to the benefit of a later action (which would be otherwise too late) begun in aid of the first suit to correct its form; Succession of Saunders, 37 La. An. 769; or extend its scope. Hughes *v.* Whitaker, 84 N. C. 640. So, for one year after abatement, or discontinuance of the original action, in *Massachusetts* (1882 P. S. c. 136, § 12).

Competency of witnesses. In the United States provision is made by statute in the several states, rendering the testimony of the adverse party inadmissible in suits brought by or against the personal representative of the deceased person. It seems fitting in this place to do little more than refer to the more recent cases in the several states construing the language of these statutes.

Thus, the statute renders the party incompetent as to "matters equally within the knowledge of the deceased," in *Michigan* (1882 An. Stats. § 7545). As to testimony held admissible under this act, see Rust *v.* Bennett, 39 Mich. 521; Matter of Hamper, 51 Mich. 71; Matter of Smith, 52 Mich. 415; Brown *v.* Bell, 58 Mich. 58; Cotherman *v.* Cotherman, 58 Mich. 465; Webster *v.* Sibley, 72 Mich. 630; Wilson *v.* Wilson, 80 Mich. 472; Penny *v.* Croul, 87 Mich. 15; Brennan *v.* Michigan Central Railroad, 93 Mich. 156; Dunlap *v.* Dunlap, 94 Mich. 11. An administrator cannot waive the provisions of this act. McHugh *v.* Dowd, 86 Mich. 412.

As to testimony held to be inadmissible, see Bachelder *v.* Brown, 47 Mich. 366; Eccard *v.* Brush, 48 Mich. 3; Van Fleet *v.* Van Fleet, 50 Mich. 1; Bassett *v.* Shepardson, 52 Mich. 3; Chadwick *v.* Chadwick, 52 Mich. 545; Singer *v.* Benjamin, 55 Mich. 330; Seligman *v.* Ten Eyck, 60 Mich. 268; Taylor *v.* Bunker, 68 Mich. 258; Buck *v.* Haynes, 75 Mich. 397.

A party is incompetent as to the contract or cause of action the other party to which is dead, in *Missouri* (1889 R. S. § 8918). As to testimony held admissible under this statute, see Wade *v.* Hardy, 75 Mo. 394; Magee *v.* Burch, 108 Mo. 336; St. Charles National Bank, *v.* Payne, 111 Mo. 291; Seligman *v.* Rogers, 113 Mo. 642.

As to testimony held inadmissible, see Hesaw *v.* Sigler, 68 Mo. 449; Julian *v.* Rogers, 87 Mo. 229; Leeper *v.* Taylor, 111 Mo. 312.

He cannot testify to establish his own claim or defense against the estate of a deceased person, which originated in the lifetime of the decedent, nor any such claim or defense assigned by him since the decedent's death, but only as to claims and defenses originating since the decedent's death. This is so, in *Mississippi* (1892 An. Code, § 1740). As to testimony held to be admissible under this statute, see Barry *v.* Sturdivant, 53 Miss. 490; Buckingham *v.* Wesson, 54 Miss. 526; Mitchell *v.* Tishomingo Savings Institution, 56 Miss. 444; Snell *v.*

Ferrell, 64 Miss. 655; Cole *v.* Gardner, 67 Miss. 670.

As to testimony held to be inadmissible, see Ellis *v.* Alford, 64 Miss. 8; Buie *v.* Buie, 67 Miss. 456.

He is incompetent in an action on a claim against the estate as to any matter accruing before the death of the decedent, in *California* (Code C. P. § 1880), *Pennsylvania* (1887 P. L. No. 89, § 5); also in *New Hampshire* (1891 P. S. c. 224, § 6), unless the executor elects to testify; and in *Indiana* (1894 Rev. §§ 506–08), unless the deceased has testified in his lifetime, or an agent of the deceased or witness on his behalf has testified, as to the particular transaction with the deceased. As to testimony held to be admissible under these statutes, see Estate of McCausland, 52 Cal. 568; Moseley *v.* Heney, 66 Cal. 478; Myers *v.* Reinstein, 67 Cal. 89; McGregor *v.* Donelly, 67 Cal. 149; Roche *v.* Ware, 71 Cal. 375; Knight *v.* Russ, 77 Cal. 410; Rothrock *v.* Gallaher, 91 Pa. St. 108; Ash *v.* Guie, 97 Pa. St. 493; Stephens *v.* Cotterell, 99 Pa. St. 188; Weaver *v.* Roth, 105 Pa. St. 411; Jackson *v.* Payne, 114 Pa. St. 86; Hill *v.* Truby, 117 Pa. St. 324; Porter *v.* Nelson, 121 Pa. St. 640; Keener *v.* Zartman, 144 Pa. St. 179; Brown *v.* Carey, 149 Pa. St. 134; Crothers *v.* Crothers, 149 Pa. St. 201; Boyd *v.* Conshohocken Worsted Mills, 149 Pa. St. 363; Estate of Roth, 150 Pa. St. 261; Estate of Toomey, 150 Pa. St. 535; Gerz *v.* Weber, 151 Pa. St. 396: Estate of Hoffer, 156 Pa. St. 473; Treadwell *v.* Lennig, 50 Fed. Rep. 872 (Pa.); Dodds *v.* Rogers, 68 Ind. 110; Slade *v.* Leonard, 75 Ind. 171; Beal *v.* State, 77 Ind. 231; Hatton *v.* Jones, 78 Ind. 466; Wolfe *v.* Kable, 107 Ind. 565; Durham *v.* Shannon, 116 Ind. 403; Martin *v.* Martin, 118 Ind. 227; Works *v.* State, 120 Ind. 119; Brown *v.* Marshall, 120 Ind. 323; Walker *v.* Steele, 121 Ind. 436; Denny *v.* Denny, 123 Ind. 240; Thistlewaite *v.* Thistlewaite, 132 Ind. 355; Schmidt *v.* Packard, 132 Ind. 398.

As to testimony held inadmissible, see Uhlhorn *v.* Goodman, 84 Cal. 185; Fox *v.* Tay, 89 Cal. 339; Moore *v.* Schofield, 96 Cal. 486; Chase *v.* Irwin, 87 Pa. St. 286; Hogeboom *v.* Gibbs, 88 Pa. St. 235; Guldin *v.* Guldin, 97 Pa. St. 411; Harnish *v.* Keener, 98 Pa. St. 6; Oram *v.* Rothemel, 98 Pa. St. 300; Twistman *v.* Croushore, 104 Pa. St. 192; Foster *v.* Collner, 107 Pa. St. 310; Heydrick's Appeal, 109 Pa. St. 610; Adams *v.* Edwards, 115 Pa. St. 211; Crothers *v.* Crothers, 149 Pa. St. 201; Bair *v.* Frischkorn, 151 Pa. St. 466; Estate of Young (Pa.), 24 Atl. Rep. 124; Smith *v.* Hoy, 152 Pa. St. 377; Tuck *v.* Nelson, 62 N. H. 469; Welch *v.* Adams, 63 N. H. 344; Clark *v.* Clough, 65 N. H. 43; Copeland *v.* Koonz, 125 Ind. 126.

It is not competent for any party to give evidence of any conversation or admission of the deceased relative to any matter at issue, in *Minnesota* (1891 Stats. § 5093). As to testimony held to be admissible under this statute, see Chadwick *v.* Cornish, 26 Minn. 28; Parker *v.* Maxwell, 45 Minn. 1; inadmissible, Rhodes *v.* Pray, 36 Minn. 392.

He is not a competent witness in his own favor except as to facts happening since the decedent's death, in *Vermont* (1880 R. L. § 1002). As to testimony held to be admissible under this act, see Willey *v.* Hunter, 57 Vt. 479; Richardson *v.* Wright, 58 Vt. 367; Barber *v.* Bennett. 58 Vt. 476; Stowe *v.* Bishop, 58 Vt. 498; Connecticut River Savings Bank *v.* Albee, 64 Vt. 571; inadmissible, Seymour *v.* Beach, 4 Vt. 493; Davis *v.* Davis, 49 Vt. 464; Hall *v.* Hamblett, 51 Vt. 589; Rooney *v.* Minor, 56 Vt. 527.

He is not competent, unless the opposite party is admitted or called on his own behalf, in *New Jersey* (1877 Rev.

378, § 2). As to testimony held to be admissible under this statute, see Marlatt *v.* Warwick, 3 C. E. Gr. 108; Halstead *v.* Tyng, 2 Stew. (N. J.) 86; Besson *v.* Cox, 8 Stew. (N. J.) 87; Palmateer *v.* Tilton, 13 Stew. (N. J.) 555; Haines *v.* Watts, 26 Atl. 572; inadmissible, Lanning *v.* Lanning, 2 C. E. Gr. 228; Shepherd *v.* McClain, 3 C. E. Gr. 128; Sweet *v.* Parker, 7 C. E. Gr. 455; Montgomery *v.* Simpson, 4 Stew. (N. J.) 1; Smith *v.* Burnet, 8 Stew. (N. J.) 314; S. C. 7 Stew. (N. J.) 219; Tichenor *v.* Tichenor, 16 Stew. (N. J.) 163; Matthews *v.* Hoagland, 3 Dick. (N. J.) 456.

He is not a competent witness as to transactions or statements of the deceased, unless called as a witness thereto by the opposite party, in *Alabama* (1886 Code, § 2765), *Arkansas* (1884 Dig. Stats. § 2857), *Delaware* (1893 R. C. 798, § 1), *Rhode Island* (1882 P. S. c. 214, § 33), *Tennessee* (1884 Code, § 4565), *Texas* (1888 R. S. Art. 2248). As to testimony held to be admissible under these statutes, see David *v.* David, 66 Ala. 139; Daily *v.* Daily, 66 Ala. 266; Dudley *v.* Steele, 71 Ala. 423; Bibb *v.* Hunter, 79 Ala. 351; Hill *v.* Helton, 80 Ala. 528; Gamble *v.* Whitehead, 94 Ala. 335; Howle *v.* Edwards, 97 Ala. 649; Wassell *v.* Armstrong, 35 Ark. 247; McDeamon *v.* Maxfield, 38 Ark. 631; Lawrence *v.* La Cade, 46 Ark. 378; Bowen *v.* Bowen, 17 R. I. 738; Kenyon *v.* Pierce, 17 R. I. 794; Alexander *v.* Kelso, 1 Baxt. 5; Kelton *v.* Jacobs, 5 Baxt. 574; Linch *v.* Linch, 1 Lea 526; Orr *v.* Cox, 3 Lea 617; Fuqua *v.* Dinwiddie, 6 Lea 645; McBrien *v.* Martin, 87 Tenn. 13; Montague *v.* Thomason, 91 Tenn. 168; Johnson *v.* Brown, 51 Tex. 65; Wootters *v.* Hale, 83 Tex. 563; Choate *v.* Huff (Tex.), 18 S. W. Rep. 87.

As to testimony held inadmissible under these statutes, see Strange *v.* Graham, 56 Ala. 614; Drew *v.* Simmons, 58 Ala. 463; Smith *v.* Bryant, 60 Ala. 235; Killen *v.* Lide, 65 Ala. 505; Beadle *v.* Graham, 66 Ala. 99; Dismukes *v.* Tolson, 67 Ala. 386; Dunlap *v.* Mobley, 71 Ala. 102; Gist *v.* Gans, 30 Ark. 285; Rainwater *v.* Harris, 51 Ark. 401; Nunnally *v.* Becker, 52 Ark. 550; Stringfellow *v.* Montgomery, 57 Tex. 349; Brown *v.* Mitchell, 75 Tex. 9; Hubbard *v.* Cox, 76 Tex. 239; Newton *v.* Newton, 77 Tex. 508.

He is not competent as to transactions or statements of the deceased, unless called as a witness thereto by the opposite party, or unless the opposite party has offered testimony thereto, in *Colorado* (1891 An. Stats. § 4816), *Illinois* (1891 R. S. c. 51, § 2), *Virginia* (1887 Code, § 3346). As to testimony held to be admissible under these statutes, see Savard *v.* Herbert, 1 Col. Ap. 445; Freeman *v.* Freeman, 62 Ill. 189; Foley *v.* Bushway, 71 Ill. 386; Steele *v.* Clark, 77 Ill. 471; Roberts *v.* Pierce, 79 Ill. 378; Strauber *v.* Mohler, 80 Ill. 21; Branger *v.* Lacy, 82 Ill. 9; Remann *v.* Buckmaster, 85 Ill. 403; Penn *v.* Oglesby, 89 Ill. 110; Sconce *v.* Henderson, 102 Ill. 376; Bradshaw *v.* Combs, 102 Ill. 428; Plain *v.* Roth, 107 Ill. 588; Scheerer *v.* Scheerer, 109 Ill. 11; Bevan *v.* Atlanta National Bank, 142 Ill. 302; Riggs *v.* Powell, 142 Ill. 453.

As to testimony held inadmissible, see Palmer *v.* Hanna, 6 Col. 55; Lowman *v.* Aubrey, 72 Ill. 619; Langley *v.* Dodsworth, 81 Ill. 86; Crane *v.* Crane, 81 Ill. 166; Warrick *v.* Hull, 102 Ill. 580; Hurlbut *v.* Meeker, 104 Ill. 542; Wachter *v.* Blowney, 104 Ill. 610; Richardson *v.* Hadsall, 106 Ill. 476; Ferbrache *v.* Ferbrache, 110 Ill. 210; Stiger *v.* Bent, 111 Ill. 328; Dyer *v.* Hopkins, 112 Ill. 168; Powell *v.* Powell, 114 Ill. 329; Ebert *v.* Gerding, 116 Ill. 216; Kelsey *v.* Snyder, 118 Ill. 544; Bank *v.* Dunbar, 118 Ill. 625; Comer *v.* Comer, 119 Ill. 170; Way *v.* Harriman, 126 Ill. 132; Holderman *v.* Gray,

130 Ill. 442; Shaw *v.* Schoonover, 130 Ill. 448; Lancaster *v.* Blaney, 140 Ill. 203; Grommex *v.* St. Paul Trust Co., 147 Ill. 634; Morris *v.* Grubb, 30 Gratt. 286; Carter *v.* Hale, 32 Gratt. 115; Tate *v.* Tate, 75 Va. 522.

He is not a competent witness in his own favor as to transactions or statements of the deceased, unless testimony thereto has been offered by the adverse party, in *Georgia* (1889 P L. p. 85). As to testimony held to be admissible under this statute, see Wallace *v.* Owen, 71 Ga. 544; Watts *v.* Baker, 78 Ga. 622; Payne *v.* Miller, 89 Ga. 73; New Ebenezer Association *v.* Green Lumber Co., 89 Ga. 125; inadmissible, Godbee *v.* Sapp, 53 Ga. 283; Bothwell *v.* Dobbs, 59 Ga. 787; Ford *v.* Holmes, 61 Ga. 419; Stanford *v.* Murphy, 63 Ga. 410; Huggins *v.* Huggins, 71 Ga. 66; Johnson *v.* Champion, 88 Ga. 527; Thompson *v.* Ray (Ga.), 17 S. E. Rep. 903.

He is not a competent witness as to transactions and statements of the deceased unless the testimony of the deceased person or of the executor is offered, in *Florida* (1892 R. S. § 1095), *Iowa* (1888 R. C. § 3639), *Maine* (1883 R. S. c. 82, § 98), *Maryland* (1888 P. G. L. Art. 35, § 2), *Nebraska* (1893 C. S. 899, § 329), *New York* (Code C. P. § 829), *North Carolina* (1883 Code, § 590), *Ohio* (1890 R. S. § 5242), *South Carolina* (Code C. P. § 400), *West Virginia* (1891 Code, c. 130, § 23), *Wisconsin* (1889 An. Stats. § 4069). As to testimony held to be admissible under these statutes, see Sanderson *v.* Sanderson, 20 Fla. 292; Deans *v.* King, 20 Fla. 533; Dunne *v.* Deery, 40 Ia. 251; Bailey *v.* Keyes, 52 Ia. 90; Conger *v.* Bean, 58 Ia. 321; Fuller *v.* Lendrum, 58 Ia. 353; Leasman *v.* Nicholson, 59 Ia. 259; MacNamara *v.* New Melleray (Ia.), 55 N. W. Rep. 322; Reed *v.* Gilbert, 32 Me. 519; Kelton *v.* Hill, 59 Me. 259; Brooks *v.* Goss, 61 Me. 307; Holmes *v.* Brooks, 68 Me. 416; Rawson *v.* Knight, 73 Me. 340; Douglass *v.* Snow, 77 Me. 91; Hall *v.* Otis, 77 Me. 122; Segar *v.* Lufkin, 77 Me. 142; Swasey *v.* Ames, 79 Me. 483; Goulding *v.* Horbury, 85 Me. 227; Scholl *v.* Murray, 32 Md. 9; Jones *v.* Jones, 36 Md. 447; Trahern *v.* Colburn, 63 Md. 104; Whitridge *v.* Whitridge, 76 Md. 54; Bartlett *v.* Bartlett, 15 Neb. 594; Hier *v.* Grant, 47 N. Y. 278; Cary *v.* White, 59 N. Y. 336; Hildebrant *v.* Crawford, 65 N. Y. 107; Miller *v.* Montgomery, 78 N. Y. 286; Church *v.* Howard, 79 N. Y. 420; Pratt *v.* Elkins, 80 N. Y. 198; Potts *v.* Mayer, 86 N. Y. 302; Badger *v.* Badger, 88 N. Y. 559; Matter of Wilson, 103 N. Y. 374; Nearpass *v.* Gilman, 104 N. Y. 510; Loder *v.* Whelpley, 111 N. Y. 239; Hurlbut *v.* Hurlbut, 128 N. Y. 420; Marsh *v.* Brown, 18 Hun 319; Ely *v.* Clute, 19 Hun 35; Pursell *v.* Fry, 19 Hun 595; Denise *v.* Denise, 41 Hun 9; Matter of Chase, 41 Hun 203; Mills *v.* Davis, 41 Hun 415; Miller *v.* Davis, 60 Hun 198; Herrington *v.* Winn, 60 Hun 235; Porter *v.* Dunn, 61 Hun 310; Godine *v.* Kidd, 64 Hun 585; Kesler *v.* Manney, 89 N. C. 369; Vester *v.* Collins, 101 N. C. 114; Norris *v.* Stewart, 105 N. C. 455; Sawyer *v.* Grandy, 113 N. C. 42; Rankin *v.* Hannan, 38 O. St. 438; Blakely *v.* Frazier, 11 S. C. 122; Robinson *v.* Robinson, 20 S. C. 568; Brice *v.* Miller, 35 S. C. 537; Wingo *v.* Caldwell, 36 S. C. 598; Gilmer *v.* Baker, 24 W. Va. 72; Coffman *v.* Hedrick, 32 W. Va. 119; Cameron *v.* Cameron, 15 Wis. 1; Adams *v* Allen, 44 Wis. 93; Begole *v.* Hazzard, 81 Wis. 274.

As to testimony held inadmissible under these statutes, see Robinson *v.* Dibble, 17 Fla. 457; Sanderson *v.* Sanderson, 17 Fla. 820; Sammis *v.* L'Engle, 19 Fla. 800; Stewart *v.* Stewart, 19 Fla. 846; Belote *v.* O'Brien, 20 Fla. 126; Ley *v.* Edwards, 21 Fla. 333; Bank *v.* Owen, 52 Ia. 107; Burton *v.*

Baldwin, 61 Ia. 283; Ivers *v.* Ivers, 61 Ia. 721; French *v.* French, 84 Ia. 655; Giesecke Boot & Shoe Manufacturing Co. *v.* Seevers, 85 Ia. 685; Berry *v.* Stevens, 69 Me. 290; Silver *v.* Worcester, 72 Me. 322; Preble *v.* Preble, 73 Me. 362; Hubbard *v.* Johnson, 77 Me. 139; Buck *v.* Rich, 78 Me. 431; Cannon *v.* Crook, 32 Md. 482; Denison *v.* Denison, 35 Md. 361; Scott *v.* McCann, 76 Md. 47; Bowie *v.* Bowie, 77 Md. 311; Ransom *v.* Schmela, 13 Neb. 73; Megeman *v.* Bell, 13 Neb. 247; Pope *v.* Alden, 90 N. Y. 298; Maverick *v.* Marvel, 90 N. Y. 656; Koehler *v.* Adler, 91 N. Y. 657; Lane *v.* Lane, 95 N. Y. 501; Leutchford *v.* Lord, 132 N. Y. 465: O'Brien *v.* Weiler, 140 N. Y. 281; Gifford *v.* Sackett, 15 Hun 79; Waver *v.* Waver, 15 Hun 277; Fisher *v.* Verplanck, 15 Hun 150; Schoonmaker *v.* Wolford, 20 Hun 166; Snyder *v.* Sherman, 23 Hun 139; Ward *v.* Plato, 23 Hun 402; Hill *v.* Hotchkiss, 23 Hun 414; Wilkins *v.* Baker, 24 Hun 32; Hunter *v.* Herrick, 26 Hun 272; Hadsall *v.* Scott, 26 Hun 617; Pease *v.* Barnett, 30 Hun 525; Rousseau *v.* Bleau, 60 Hun 259; McMurray *v.* McMurray, 63 Hun 183; Davis *v.* Seaman, 64 Hun 572; Van Vechten *v.* Van Vechten, 65 Hun 215; Grier *v.* Cagle, 87 N. C. 377; Hathaway *v.* Hathaway, 91 N. C. 139; Shields *v.* Smith, 104 N. C. 57; Carey *v.* Carey, 104 N. C. 171; Earle *v.* Harrison, 18 S. C. 329; Reynolds *v.* Rees, 23 S. C. 438; Owens *v.* Owens, 14 W. Va. 88; Quarrier *v.* Quarrier, 36 W. Va. 310.

He is not a competent witness in his own behalf as to transactions or statements of the deceased where he has acquired title from or through the deceased, in *Kansas* (1889 G. S. § 4417). As to testimony held to be inadmissible under this statute, see Jaquith *v.* Davidson, 21 Kan. 341; Rich *v.* Bowker, 25 Kan. 7; McCartney *v.* Spencer, 26 Kan. 62; Wills *v.* Wood, 28 Kan. 400; Van Fleet *v.* Stout, 44 Kan. 523.

Entries, memoranda, and declarations of the deceased are inadmissible as evidence in actions by or against his personal representatives, in *Connecticut* (1888 G. S. § 1094).

He is not a competent witness as to any verbal statement of a deceased person. *Kentucky* (Civ. Code, § 606). As to testimony held admissible under this statute, see Beach *v.* Cummins (Ky.), 18 S. W. Rep. 360; inadmissible, Wilson *v.* Unselt, 12 Bush 215; Harden *v.* Taylor, 78 Ky. 393; Hobbs *v.* Russell, 79 Ky. 61; Alexander *v.* Alford, 89 Ky. 105; Hopkins *v.* Faeber, 86 Ky. 223.

Admissions by personal representative. In general, the estate of a decedent is bound by the admissions of an executor or administrator made while he was in office, Hill *v.* Buckminster, 5 Pick. 391; Atkins *v.* Sanger, 1 Pick. 192; Lawson *v.* Powell, 61 Ga. 681; Floyd *v.* Wallace, Id. 688; Clark *v.* Bell, Id. 147; Planters *v.* Neel, 74 Ga. 576; but see, *contra*, Wright *v.* Wright, 2 Brev. 125; Ciples *v.* Alexander, 3 Brev. 558; and such admissions have been held to be inadmissible as evidence in a suit brought after the removal of the administrator. Hueston *v.* Hueston, 2 O. St. 488. So too, the estate is not bound by admissions made by an administrator before his qualification as such. Gaines *v.* Alexander, 7 Gratt. 257. And the admissions of one executor are not evidence against his co-executor, Hammon *v.* Huntley, 4 Cow. 493; Forsyth *v.* Ganson, 5 Wend. 558; Finnern *v.* Hinz, 38 Hun 465; nor against his successor in office. Knapp *v.* Hanford, 6 Conn. 176; but see, *contra*, Lashlee *v.* Jacobs, 9 Humph. 718.

Pleading plene administravit. Under the American system of settlement of estates in the Probate Court, and distribution of estates substantially among all creditors in equal proportion, the plea

of *plene administravit* has become less important than under the old practice. In Florida, it is now obsolete, except where the question of assets is the direct object of the suit. Barnes *v.* Scott, 29 Fla. 285; McClell Dig. 96, §§ 68–70.

In the absence of conflicting legislation, however, and in default of such plea, an executor or administrator admits the sufficiency of the assets by giving a confession of judgment, Den *v.* De Hart, 1 Halst. 450; or suffering judgment by default. Dickson *v.* Wilkinson, 3 How. 57; Estate of St. John, Tuck. 126; Baracliffe *v.* Griscom, Coxe 165; Platt *v.* Robins, 1 Johns. Cas. 278. Carner *v.* Wells, 17 R. I. 688. And it cannot be pleaded to a suit brought on a judgment rendered against him, where such plea has not been pleaded in the original action. Howell *v.* Potts, Spencer 569; Brown *v.* McKie, 108 N. C. 387; Young *v.* Kennedy, 2 McMullen 80; White *v.* Archbill, 2 Sneed 588; Newcombe *v.* Goss, 1 Met. 330. And a plea of no assets at the time the judgment was rendered is insufficient, Cogan *v.* Duncan, 23 Miss. 274; but a subsequent insolvency of the estate may be pleaded to a *scire facias* on a judgment *de bonis testatoris.* Coleman *v.* Hall, 12 Mass. 570. But a confession of judgment to one creditor is not an admission of assets as to another. Ruggles *v.* Sherman, 14 Johns. 446. One of two executors or administrators may plead *plene administravit,* and discharge himself from personal liability. Douglass *v.* Satterlee, 11 Johns. 16; App *v.* Driesbach, 2 Rawle 287. And in an action against executors for a legacy the plaintiff must allege assets. De Witt *v.* Schoonmaker, 2 Johns. 243.

Where no inventory has been filed by an administrator, it has been held that he cannot plead *plene administravit.* Cushing *v.* Field, 9 Met. 180. And he cannot set up the insolvency of the estate in defense to a suit brought against himself individually for trover and conversion, Stuckey *v.* Bellah, 41 Ala. 700; or, on his bond, for fraudulent sale of lands. Probate Judge *v.* Lane, 50 N. H. 556. So, the personal representative will be estopped by his voluntary distribution of the estate among the next of kin from pleading *plene administravit* against creditors whose claims had been duly presented, North *v.* Priest, 81 Mo. 561; or the plaintiff can prove notice of his claim before distribution, Willingham *v.* Chick, 14 S. C. 93; and even as against creditors of whom he had no notice, Amis *v.* Cameron, 55 Ga. 449; but not where the distribution was made with proper refunding bonds and after the time for presentment of claims had expired and the plaintiff had not presented his claim. Maxwell *v.* Smith, 86 Tenn. 539.

Under the plea of *plene administravit* the burden is on the plaintiff to prove assets. Bentley *v.* Bentley, 7 Cow. 701; McKeithan *v.* McGill, 88 N. C. 517; Gilpin *v.* Noe, 9 Heisk. 192. And he may make such proof, although the administrator has not filed an inventory. Marr *v.* Rucker, 1 Humph. 348. Proof on his part is, however, dispensed with where the administrator has demurred to a declaration for a devastavit alleging sufficient assets. Lee *v.* Gardner, 26 Miss. 521. On the other hand, proof of foreign assets in the hands of the defendant as administrator in another jurisdiction will not defeat the plea, Peck *v.* Mead, 2 Wend. 470; and the defendant may under this plea prove payment of preferred debts. Haines *v.* Price, Spen. 480.

In regard to the effect, as evidence of assets, of a judgment *de bonis testatoris* against the personal representative, the authorities are not in accord. It is variously held to be conclusive evidence of assets against the personal represent-

ative, in Dorsey *v.* Hammond, 1 Bland 463; Mosier *v.* Zimmerman, 5 Humph. 62; Micheau *v.* Caldwell, 1 Spears 276; and People *v.* Judges, 4 Cow. 445; conclusive upon sureties on an administration bond, in Walton *v.* Pearson, 85 N. C. 34; *prima facie* evidence of assets, in Kearney *v.* Sascer, 37 Md. 277; Hussey *v.* White, 10 Serg. & R. 346; Estate of Schroeder, 46 Cal. 304; and not even *prima facie* evidence of a debt against the heirs in Saddler *v.* Kennedy, 26 W. Va. 636; Groot *v.* Hitz, 3 Mackey 247; or devisees, Boykin *v.* Cook, 61 Ala. 472; Keefe *v.* Malone, MacArth. 236; or not conclusive, Watts *v.* Taylor, 80 Va. 627. It merely ascertains the debt, and has no effect in fixing the defendant with assets, or in disturbing the order of administration. Dunn *v.* Barnes, 73 N. C. 273.

Judgment quando. On a plea of *plene administravit* judgment *quando* may be taken, to be satisfied out of goods afterward coming into the hands of the administrator. Sigler *v.* Haywood, 8 Wheat. 675; Brown *v.* Whitmore, 71 Me. 65; Botts *v.* Fitzpatrick, 5 B. Mon. 397; Wilt *v.* Bird, 7 Blackf. 258; Miller *v.* Towles, 4 J. J. Marsh. 255. The plaintiff must elect between such judgment and a judgment for the amount with *scire facias* against the heirs. Wilson *v.* Bynum, 92 N. C. 717. And where the plaintiff accepts the plea of *plene administravit*, and takes judgment *quando*, he cannot allege previous assets in hand. Orcutt *v.* Orms, 3 Paige 459. In some states, judgments against an executor must, on their face, be payable in due course of administration. Racoullat *v.* Sausevain, 32 Cal. 376; Drake *v.* Foster, 52 Cal. 225; Thorn *v.* State, 10 Tex. 295; Wilcox *v.* State, 24 Tex. 544; Turney *v.* Gates, 12 Ill. 141; Bull *v.* Harris, 31 Ill. 487. In an action on a judgment *quando* it is sufficient to allege the coming of assets into the administrator's hands since the recovery of the judgment. Southard *v.* Potts, 2 Zab. 278. After a judgment *quando* the creditor may bring suit against the executor and others to bring in assets which he had never received. Greer *v.* Willis, 67 Ga. 43. On the other hand, judgment rendered against the personal representative on the plea of *plene administravit* is conclusive as to assets. Trimmier *v.* Thomson, 19 S. C. 247.

Judgment de bonis testatoris. In actions or suits against executors or administrators, to recover debts or claims due from the estate, the judgment should be rendered against them in their representative capacity, Lawton *v.* Buckingham, 15 Ia. 22; Blondeau *v.* Sheridan, 81 Mo. 545; Imlay *v.* Hamilton, Pen. (N. J.) 997; Masters *v.* Masters, 13 Ill. Ap. 611; Harrell *v.* Mattingley, 27 Ind. 500; Campfield *v.* Ely, 1 Gr. (N. J.) 150; Stone *v.* Kaufman, 25 Ark. 186; Ferrin *v.* Myrick, 41 N. Y. 315; Woodruff *v.* Woodruff, 1 South. 375; and may be amended to that effect, if erroneously entered *de bonis propriis.* Jennings *v.* Wright, 54 Ga. 537.

Execution de bonis testatoris—de terris. All property of the estate in the hands of an executor is liable, in Texas, to execution. Lemuel *v.* Pauska, 54 Tex. 505. But see, to the effect that execution should not be issued, but the judgment reported to the Probate Court for classification and payment, Paxton *v.* Meyer, 67 Tex. 96. So, in Florida, execution may issue against the lands of the decedent. *Florida* (1892 R. S. § 1917). But in Massachusetts, the statute requires the writ on a judgment *de bonis testatoris* to be *fi. fa. de bonis testatoris* only. *Massachusetts* (1882 P. S. c. 166, § 5). And, in general, a judgment against the executor is not a lien on the decedent's land, and cannot be enforced against it by *fi. fa.* Lichtenberg *v.* Hardtfelder, 103 N. Y. 302; Platt *v.* Platt, 105 N. Y. 488; *New*

York (2 R. S. 449, § 12; Code C. P. §§ 1251, 1823); Peckham *v.* O'Hara, 74 Mich. 287; Crooks *v.* Whitford, 47 Mich, 288; Wheeler *v.* Floyd, 24 S. C. 413; Huggins *v.* Oliver, 21 S. C. 147; Jones *v.* Parker, 57 Ga. 11; McGee *v.* Wallis, 57 Miss. 638; Wilson *v.* Bynum, 92 N. C. 717; Woodyard *v.* Polsley, 14 W. Va. 211; see, however, Wilson *v.* Kelly, 19 S. C. 160; Rogers *v.* Huggins, 6 S. C. 356. A creditor recovering judgment against the executor cannot have *fi. fa.* against lands in possession of the devisee, Schley *v.* Collis, 47 Fed. Rep. 250; or heir, Jones *v.* Parker, 57 Ga. 11; or conveyed by the decedent to his administrator and held by him at the time the judgment was rendered. Smith *v.* Smith, 59 Ga. 550.

No execution can issue on a judgment against administrators if, when the judgment is entered, they had made application in writing to the proper court suggesting the insolvency of the estate, Union National Bank *v.* Poulson, 11 Vroom 284; Taylor *v.* Volk, 9 Vroom 204. If suggestion of insolvency is not made before the execution issues, it will be stayed. Von Arx *v.* Wemple, 16 Vroom 87. But if the administrator of an estate which is represented to be insolvent assume the the defense of an action pending against his intestate, and neglect to suggest the insolvency on the record, an execution upon a judgment against the administrator may be levied on real estate of the deceased which has been fraudulently conveyed. Wyman *v.* Fox, 55 Me. 523.

In New York, leave of court must be obtained before execution can issue against executors, Code C. P. § 1825; Hanselt *v.* Gano, 1 Dem. 36; Matter of Boyle, 2 Connoly 57; Glacius *v.* Fogel, 4 Redf. 516; but such leave cannot be had to issue an execution against the real estate of the deceased upon a judgment against his representatives. James *v.* Beesly, 4 Redf. 236.

Judgment de bonis propriis. Where the executor or administrator is individually liable, the judgment should be *de boni spropriis.* McLaughlin *v.* Winner, 63 Wis. 120; Power *v.* Speckman, 126 N. Y. 354; Foland *v.* Dayton, 40 Hun 563; Edwards *v.* Love, 94 N. C. 365; Daviess *v.* Mead, 2 Bibb. 397; *e. g.*, on a contract made after the testator's death, Ferrin *v.* Myrick, 41 N. Y. 315; although the judgment is against the administrator "as such" or "as administrator." Hardy *v.* Cole, 16 Mass. 530; Rich *v.* Sowles, 64 Vt. 408; Braden *v.* Hollingsworth, 8 Humph. 19. So, although he is sued both individually and as executor, where the whole theory of the complaint is that the property in suit does not belong to the estate, but is a trust fund, and he is sued as executor for the sole purpose of preventing a distribution of the funds in controversy, Haxton *v.* McClaren, 132 Ind. 235; and although the declaration is against him as administrator only, Baugher *v.* Wilkins, 16 Md. 35; but see, *contra*, Christian *v.* Morris, 50 Ala. 585; especially where the cause of action arose against the decedent in his lifetime. Boykin *v.* Cook, 61 Ala. 472. The proper judgment against an executor and his sureties, in an action for an official default on the bond, is against him *de bonis propriis*, McNulty *v.* Marcus, 57 Ga. 507; Carroll *v.* Connet, 2 J. J. Marsh. 195; and a surety, having satisfied such judgment, becomes a creditor of the administrator in his own right. Hazen *v.* Durling, 1 Gr. Ch. 138. So, a judgment rendered against an executor, in a suit against him and his sureties begun after his removal from office, will not bind the estate, and if begun before his removal, the judgment will bind him personally, whether binding on the estate or not. Gibbs *v.* Hodge, 65 Ala. 366.

Execution de bonis propriis. An execution, reciting a judgment against A.

as administrator of B., and directing the officer to levy on the goods of said debtor, runs against the individual property of A. Keniston *v.* Little, 30 N. H. 318. So, where there is no direction as to the property to be levied on. Jones *v.* McCleod, 61 Ga. 602; Lough *v.* Flaherty, 29 Minn. 295. But a judgment directing an executor to pay when he shall have collected certain claims due to the estate constitutes no lien that can be enforced against his individual real estate. Gay *v.* Skeen, 36 W. Va. 582.

Supplementary proceedings will lie against an administrator on a judgment recovered against him as such, and credited in his final settlement, Rhodes *v.* Casey, 20 S. C. 491; but an attachment for contempt will not be granted for the enforcement of such judgment, Ockershausen *v.* Ockershausen, 59 Hun 200; Cheatham *v.* Cheatham, 81 Va. 395; nor to collect a debt which he owed personally to the testator, Estate of Royal, 16 Phila. 249; although it will be granted to enforce a decree made on accounting in the Probate Court. *Ex parte* Smith, 53 Cal. 204. In Alabama, upon the return of an execution against an executor, "no property found," the plaintiff is entitled to a statutory execution against him and the sureties on his official bond. Hudson *v.* Modawell, 64 Ala. 481; Code, § 2619.

In an action upon a judgment against an administrator he can be pursued personally only for a devastavit, Mead *v.* Kilday, 2 Watts 110; and in an action against an executor upon a contract of his testator, where a devastavit is not alleged or proved, judgment *de bonis propriis* is erroneous, Smith *v.* Chapman, 93 U. S. 41; Boyce *v.* Grundy, 9 Pet. 275; although under the New Hampshire statute it is only necessary to allege that the execution *de bonis testatoris* was returned *nulla bona.* Peaslee *v.* Kelly, 38 N. H. 380. If judgment be entered against an executor *de bonis testatoris,* execution to be levied against the lands of the deceased for a certain sum, it is to be considered a judgment *de terris,* and not evidence of a devastavit to support a return of *nulla bona* and devastavit. Moore *v.* Kerr, 10 Serg. & R. 348. Upon a return of *nulla bona* and devastavit to an execution *de bonis testatoris* the creditor may have a *fi. fa. de bonis propriis* without further proceedings, People *v.* Judges, 4 Cow. 445; Boykin *v.* Cook, 61 Ala. 472; Payne *v.* Dejean, 32 La. An. 888; although such execution may be denied where an issue is pending as to the existence of assets, Dickerson *v.* Wilcoxen, 97 N. C. 309; and may be restrained by a court of equity by injunction, where the estate is declared insolvent after judgment and execution against it. Lambert *v.* Mallett, 50 Ala. 73; or, where the assets have become unexpectedly depreciated in value, Benner *v.* Alexander, 16 Or. 349; or to restrain an action at law against the representative individually on such judgment. Gause *v.* Walker, 55 Ga. 129. But an executor will not be relieved by injunction unless he has taken proper proceedings to have the estate declared insolvent, Von Arx *v.* Wemple, 16 Vroom 154; nor, on a judgment suffered to go against himself individually, on the ground of an agreement that no effort should be made to charge him personally, Weakley *v.* Gurley, 60 Ala. 399; although such agreement has been held to be a sufficient defense at law to a *scire facias* against the administrator personally on a judgment entered against him as administrator. Keller *v.* Myers, 5 Lea 365.

Execution on judgment against decedent. Where judgment has been rendered against decedent in his lifetime, the proceeding by *scire facia*

and execution is regulated in detail by statute in those of the United States where the common-law procedure has been modified. Thus, in *New York* (Code C. P. § 1380), execution may be issued, in general, after the expiration of one year by leave of the court first obtained.

Confession of judgment. At common law an executor or administrator may confess judgment. Wilson *v.* Wilson, 1 Cranch C. C. 255. And, in New York, where the statute prohibits such judgment, judgment may be confessed by a firm of which the executors as such are members. Columbus Watch Co. *v.* Hodenpyl, 135 N. Y. 430.

Attachment. Attachment will not lie against a nonresident executor, McCombe *v.* Hudson, 2 Dall. 73; Johnson *v.* Walworth, 2 Johns. Cas. 372; Wickham *v.* Stern, 18 Civ. Pro. 63; and equity will not aid the plaintiff in such attachment by injunction. Haight *v.* Bergh, 2 Gr. Ch. 388.

*CHAPTER THE SECOND.

OF REMEDIES AGAINST EXECUTORS AND ADMINISTRATORS IN EQUITY.†

What suits in equity may be brought against executors, &c.

An executor or administrator is liable, in his representative character, to all equitable demands, with regard to personal property, which existed against the deceased at the time of his death (*a*).

Executors and administrators considered in equity as trustees.

Again, executors and administrators are for most purposes considered, in Courts of Equity, as trustees; for instance, they are held in equity to be personally liable for all breaches of the ordinary trusts of their office (*b*): Upon this principle, those courts have exercised a jurisdiction over them, in the administration of assets, by compelling them, in the due execution of their trust, to apply the property to the payment of debts and legacies, and the surplus, according to the will, or in case of intestacy, according to the Statute of Distributions (*c*).

Instances of this:

Hence a Court of Equity will make an order, for payment of a personal legacy; or for the distribution of an intestate's personal estate (*d*): and will compel an executor or administrator, in the same manner as it does an express trustee, to discover and set forth an account of the assets, and of his application of them (*e*): And, even in a case where the *testator directed that the executor should not be compelled by law to declare the amount of a residue bequeathed to him, the court directed an

† See American note at end of this chapter.

(*a*) Toller, 479.

(*b*) Re Marsden, 26 Ch. D. 783.

(*c*) Adair *v.* Shaw, 1 Scho. & L. 262. Auxiliary grounds of jurisdiction also formerly existed; such as the necessity of taking accounts and compelling a discovery, and the consideration that the remedy at law, when it existed, was not plain, adequate, and complete.

(*d*) Com. Dig. Chancery (3 D. 1). Howard *v.* Howard, 1 Vern. 134.

(*e*) In Brooks *v.* Oliver, Ambl. 406, the acting executor, to whom the produce of an estate in Antigua, belonging to an infant, was consigned, was directed to account annually by affidavit.

account against him (*f*). So an account has been decreed of an intestate's personal estate, notwithstanding an account before taken, and a distribution decreed in the Spiritual Court (*g*). And a bill was, in the case of Dulwich College *v.* Johnson (*gg*), held on demurrer to be properly brought for the discovery of assets, before the will was proved, during the litigation thereof in the Probate Court (*h*).

Right of individual creditors.

A single creditor may sue in equity for his demand out of the personal assets, and may, as at law, gain a preference, by the judgment in his favor, over other creditors in the same degree, who may not have used equal diligence (*i*). But a person entitled to a share of a sum of money, which is due as a debt from the testator, must sue on behalf of himself and all other parties interested in the debt, or make those other persons parties to the suit (*k*).

Executor, &c., liable to be sued for testator's debts from moment of death.

Although an executor has a year allowed him in equity to pay legacies, that does not extend to debts, but he is liable to be sued for debts the moment after the testator's death (*l*).

Suit against executor by testator's debtor to restrain action on ground of intended misappropriation of the fund not maintainable:

A debtor to a testator cannot maintain a suit against the personal representative, to obtain the directions of the court as to the disposal of the money due by him, and to restrain an action, brought by the personal representative to recover the debt, on the ground that the debt has been appropriated by the testator for a particular purpose, and that the personal *representative intends to apply it for purposes not warranted by the will (*m*).

Parties:

The general rule is, that if there are several executors or administrators, they must all be sued, though some of them be infants (*n*). Therefore, a person cannot, either as creditor or residuary legatee, maintain a suit in equity against one co-

(*f*) Gibbons *v.* Dawley, 2 Chanc. Cas. 198.

(*g*) Bissell *v.* Axtell, 2 Vern. 47.

(*gg*) 2 Vern. 49.

(*h*) See also Phipps *v.* Steward, 1 Atk. 285. See, however, the more modern practice of appointing a receiver pending grant of probate, *ante*, p.*428 *et seq.*

(*i*) See *ante*, p. *882. Mitf. Pl. 166, 167, 4th edit. See Atty.-Gen. *v.* Cornthwaite, 2 Cox, 44.

(*k*) Alexander *v.* Mullins, 2 Russ. & M. 568.

(*l*) Nicholls *v.* Judson, 2 Atk. 301.

(*m*) Darthez *v.* Winter, 2 Sim. & Stu. 536

(*n*) 16 Vin. Abr. 251, tit. Party (B.), pl. 20.

executor only (*o*). But it is only necessary to sue so many of the executors or administrators as have acted: this is the same at law (*p*). Where an executor in trust was outlawed, and a witness proved that he had inquired after, and could not find him, it was held that it was not necessary to make him a party (*q*).

When *cestuis que trust* are necessary parties.

Although one of two executors or trustees may sue the other executor or trustee without making the *cestuis que trust* parties to the suit, yet where such *cestuis que trust* have participated in the breach of trust they are necessary parties (*r*).

Defendant dying pending action.

If during an action the defendant dies the action can be continued against his personal representative, and it makes no difference in this respect whether the defendant dies before or after decree (*s*).

Actio personalis moritur cum persona.

As has been pointed out in an earlier part of this work (*t*), *some causes of action do not continue after the death of the wrongdoer, and, consequently, do not survive against his executor, but the maxim *actio personalis moritur cum persona* does not apply to remedies for breaches of contract, express or implied, nor does it apply to those cases of tort, where by means of a wrongful act done by a deceased person property, or the proceeds or value of property, have been appropriated by the deceased person and added to his estate (*u*). Nor will the maxim prevent a claim by a person standing in a fiduciary relationship to the deceased, where the latter has abused his position (*x*).

(*o*) Scurry *v.* Morse, 9 Mod. 89. As to adding defendants, see R. S. C., 1883, Ord. XVI. r. 11.

(*p*) *Ante*, p. *1831. And much more therefore in a Court of Equity. Brown *v.* Pittman, Gilb. Eq. Rep. 75. Strickland *v.* Strickland, 12 Sim. 463. Dyson *v.* Morris, 1 Hare, 413.

(*q*) Heath *v.* Percival, 1 P. Wms. 684. An administrator, though insolvent, must be made a party to a bill for a discovery of assets: Ashurst *v.* Eyre, 2 Atk. 51. So although he actually releases, he must be a party to the suit: Smithby *v.* Hinton, 1 Vern. 31.

(*r*) Jesse *v.* Bennett, 6 De G. M. & G. 609.

(*s*) For the practice where a defendant dies, see R. S. C. 1883, Ord. XVII. In an old case of Bland *v.* Davison, 21 Beav. 312, where the defendant died after institution of a suit against him, but before appearance, the court, after a long delay, refused to allow the suit to be revived against his heir-at-law.

(*t*) *Ante*, p. *697. See also chapter on the "Remedies for Executors in Equity," *ante*, p. *1799.

(*u*) Phillips *v.* Homfray, 24 Ch. D. 439.

(*x*) Concha *v.* Murrieta, De Mora *v.* Concha, 40 Ch. D. 543.

By Ord. XVI. r. 46 of the rules of the Supreme Court, 1883, it is enacted, that "if in any cause, matter, or other proceedings it shall appear to the Court or Judge that any deceased person who was interested in the matter in question has no legal personal representative, the Court or Judge may proceed in the absence of any person representing the estate of the deceased person, or may appoint some person to represent his estate for all the purposes of the cause, matter, or other proceeding on such notice to such persons (if any) as the Court or Judge shall think fit, either specially or generally by public advertisement, and the order so made, and any order consequent thereon, shall bind the estate of the deceased person in the same manner in every respect as if a duly constituted legal personal representative of the deceased had been a party to the cause, matter, or other proceeding."

Where no legal personal representative the court may appoint or dispense with.

The section of the Chancery Procedure Act (*y*) from which this rule was taken, was held by Lord Romilly (*z*) not to apply to the three following cases: first, where the estate of the deceased person is that which is being administered in the suit; secondly, where the interest of the deceased person is adverse to that of the plaintiff; thirdly, where the representative of the deceased person has active duties to perform.

Cases to which rule does not apply.

Kindersley, V.-C., in the case of Silver *v.* Stein (*a*) held that the corresponding section of the Chancery Procedure Act (*b*) only applied to those cases where a certain individual who, when living, was interested in the suit, and was made a party had died, but this ruling does not appear to have been followed in later cases (*c*).

In one case (*d*), where a sole plaintiff died insolvent, the court, on the application of the sole defendant, appointed a person to represent the deceased plaintiff's estate, so as to enable the defendant to have an opportunity of moving to dismiss the action for want of due prosecution (*e*).

Sole plaintiff dying insolvent.

(*y*) 15 & 16 Vict. c. 86, s. 44.

(*z*) In Moore *v.* Morris, L. R. 13 Eq. 140. See also Groves *v.* Levi, 9 Hare App. xlvii., and cases cited on same page.

(*a*) 1 Drew. 295.

(*b*) 15 & 16 Vict. c. 86, s. 44.

(*c*) See Chaffers *v.* Headlam, 9 Hare App. xlvi. Swallow *v.* Binns, *ibid.* xlvii. Re Peppitt's Estate, 4 Ch. D. 230.

(*d*) Wingrove *v.* Thompson, 11 Ch. D. 419.

(*e*) For instances of the exercise of jurisdiction, see Mortimer *v.* Mortimer, 11 W. R. 740. Crossley *v.* City of Glasgow Assurance Co., 4 Ch. D. 427. Webster *v.* British Empire Co., 15 Ch. D. 169. Curtius *v.* Caledonian Fire and Life Insurance Co., 19 Ch. D. 534.

[*1880]

Protection of the estate pending grant of probate or administration.

The court will, before probate or letters of administration of the estate have been granted, interfere on behalf of a creditor or beneficiary to protect the estate of the deceased by the appointment of a receiver or manager or both (*f*).

When the application can be made to Ch. Div.

An application for the appointment of a receiver pending probate should not be made to the Chancery Division except there are special circumstances such as danger to assets requiring the appointment (*g*).

The fact that the executor declines to admit assets, and that consequently if a receiver be not appointed the executor may prefer one creditor to another, is not sufficient (*h*); in other cases, the proper court to appoint is the Probate Court (*i*).

Claim for protection and administration.

*The addition of a claim for administration of the estate to a claim for its protection until the appointment of a legal personal representative has been held to be irregular (*k*).

Receiver pending litigation in Probate Court.

The subject of the appointment of a receiver, during a litigation in the Probate Court for probate or administration, has been already considered (*l*), and mention made of the provisions of the Probate Act, relative to the appointment of receivers of real estate *pendente lite* (*m*).

When a receiver is appointed against an executor, &c.

If, in the case of an executor or administrator, any misconduct, waste, or improper disposition of the assets is shown, the court will instantly interfere and appoint a receiver (*n*).† So the bankruptcy of a sole executor and trustee is a ground for such an appointment (*o*). The court will not appoint a receiver because the executor may, and probably will, exercise his right of retainer to the prejudice of the general

(*f*) Steer *v.* Steer, 2 Dr. & Sm. 311. Nothard *v.* Proctor, 1 Ch. D. 4. Blackett *v.* Blackett, 24 L. T. 276. For form of order, see Seton, 5th edit. p. 636.

(*g*) Re Henderson, 2 Times Rep. 322.

(*h*) Phillips *v.* Jones, 28 Sol. Jo. 360.

(*i*) Re Henderson, *supra*. Re Parker, 54 L. J. Ch. 694. In the goods of Moore, 13 P. D. 36.

(*k*) Overington *v.* Ward, 34 Beav. 175. Rawlings *v.* Lambert, 1 J. & H. 458.

[*1881]

(*l*) *Ante*, pp.*427, *428.

(*m*) *Ante*, p.*429.

(*n*) Anon. 12 Ves. 5, by Sir Wm. Grant. Middleton *v.* Dodswell, 13 Ves. 268. See also Havers *v.* Havers, Barnard, Chanc. 24. Richards *v.* Perkins, 3 Younge & Coll. 299.

† See American note at end of this chapter.

(*o*) Re Johnson, L. R. 1 Ch. 325. The fact of the assignees not being before the court was held not a sufficient reason for refusing to appoint a receiver.

body of creditors (*p*), and the administration is not to be taken from the executor upon slight grounds (*q*).

Executors of receiver.

The court has no jurisdiction to order, in a summary way, the executor of a deceased receiver to bring in and pass his testator's accounts, and pay the balance to be found due out of the assets (*r*).

Motion for payment of money into court.

*The court will, immediately upon admission of assets by an executor or administrator, order so much as he admits to have in his hands to be paid into court (*s*): though it was formerly thought necessary for the plaintiff to show that the executor or administrator had abused his trust, or that the fund was in danger from his insolvent circumstances (*t*).

Former limitation of rule.

The rule appears to have been limited by Lord Redesdale (*u*) to cases in which there are no debts, or the debts are all paid, and there is no purpose for which the money is to be left outstanding. But the rule appears to be much more extensive, and any balance which is admitted to be in the executor's hands will be ordered into court, notwithstanding there are demands on it to which the executor is liable (*x*). Thus in Yare *v.* Harrison (*y*), an executor having admitted a large balance of the personal estate to be in his hands, was ordered to pay the whole into court, although he stated that an action at law was depending against him for a debt to a considerable amount due from the testator; but with liberty, in case the plaintiff in the action should recover, to apply to the court to have a sufficient sum paid out again. The plaintiff in the action

(*p*) Re Wells, 45 Ch. D. 569.

(*q*) Middleton *v.* Dodswell, 13 Ves. 268. See Smith *v.* Smith, 2 Younge & Coll. 353. Whitworth *v.* Whyddon, 2 Mac. & G. 52. Mere poverty is not sufficient: Hathornthwaite *v.* Russell, 2 Atk. 126. Anon. 12 Ves. 4. Howard *v.* Papera, 1 Mad. 142. Manners *v.* Furze, 11 Beav. 30, 31. See also Dan. Ch. Pr. 1669, 1670, 6th edit.

(*r*) Jenkins *v.* Briant, 7 Sim. 171. The proper course, in such a case, if the balance is not ascertained so that the recognizances may be put in suit, is to bring an action against the executor for an account: But this course may be avoided, if the executor will consent to an order to pass the receiver's accounts and to pay the balance: 2 Dan. Ch. Pr. 1709, 6th edit.

(*s*) Strange *v.* Harris, 3 Bro. C. C. 365. Blake *v.* Blake, 2 Scho. & Lef. 26.

(*t*) *Ibid.*

(*u*) Blake *v.* Blake, 2 Scho. & Lef. 26.

(*x*) Dan. Ch. Pr. 1734, 6th edit. If an executor admits that all the testator's debts, &c., have been paid, the court will, on motion, order the income of a balance, paid in by the executor, to be paid to the person entitled to the residue: Dando *v.* Dando, 1 Sim. 510. But see Abby *v.* Gilford, 11 Beav. 28.

(*y*) 2 Cox, 377.

did recover, and the court ordered the amount to be paid out to *the plaintiff in the action*, and not to the executor (*z*).

Admission of assets in the executor's hands.

Where the executor admits himself to have been a debtor *to the testator at the time of his death, this has always been held a clear admission of assets in his hands to the amount of the debt, and he is compellable to pay it into court accordingly (*a*).† In this case, the person to pay and the person to receive being the same, the court assumes that what ought to have been done has been done, and orders the payment, not as of a debt by a debtor, but as of moneys realized in the hands of the executor (*b*).

The court will only act on an admission.

The court, in making an order of this kind, adheres strictly to the rule of acting on the executor's admission only: and will refuse to proceed upon its knowledge derived from any other source (*c*).

Money admitted by the executor to be in the hands of his partner is in his own hands for the purpose of being ordered to be paid into court (*d*).

How the executor may discharge himself.

Where the executor admits that a certain amount of assets has come to his possession, he may discharge himself from the payment of it into court, wholly or partially, by taking credit for sums which he shows a right to retain for his own debt, due from the testator (*e*), or to have allowed him on any just grounds, or which are undisputed (*f*). Where an executor admits that he has received a certain sum belonging to the testator's estate, but adds that he has made payments, the amount of which he does not specify, the court will allow him to verify the amount of his payments, by affidavit, and order him, on motion, to pay the balance into court (*g*).

(*z*) It having been suggested in this case, that the executor had incurred unnecessary costs, by defending the action, the question whether he should personally answer to the estate for the amount of such costs was reserved to the hearing.

(*a*) Mortlock *v.* Leathes, 2 Meriv. 491. Rothwell *v.* Rothwell, 2 Sim. & Stu. 218. Costeker *v.* Horrox, 3 Younge & Coll. 530. Toulmin *v.* Copland, *ibid.* 625. White *v.* Barton, 18 Beav. 192.

† See American note at end of this chapter.

(*b*) Richardson *v.* Bank of England, 4 M. & Cr. 174, 175, by Lord Cottenham.

(*c*) Richardson *v.* Bank of England, *supra.* Meyer *v.* Montriou, 4 Beav. 343. Scott *v.* Wheeler, 12 Beav. 366.

(*d*) Johnston *v.* Aston, 1 Sim. & Stu. 73. White *v.* Barton, 18 Beav. 192.

(*e*) Middleton *v.* Poole, 2 Coll. 246.

(*f*) Roy *v.* Gibbon, 4 Hare, 65. Nokes *v.* Seppings, 2 Phill. 19.

(*g*) Anon. 4 Sim. 359. See also

*But when there is a sufficient admission by the executor of assets once come to his hands, he cannot relieve himself from paying them into court by showing any unauthorized application of them, or any investment or disposition of them which in substance amounts to a breach of his duty as executor (*h*).

Not by showing unauthorized payments.

In Freeman *v.* Fairlie (*i*), it was held that an admission by an executor that the whole amount of the property was near 40,000*l.*, and that the whole was invested in India on public securities, either in his name, or in the name of the house in which he was a partner, but subject to his disposal, unless some part was in the hands of the said house at interest, which he believed might be the case, was not a sufficient admission of money in his hands to order the payment into court of any part of it; for though an executor dealing with money in his hands is bound to ear-mark it, yet, if he does not, and cannot answer as to the state of it, the court has no power to act as upon an admission. But in Roy *v.* Gibbon (*k*), it was said by Wigram, V.-C., that the rule was, perhaps, less strict at the present day than it was stated in Freeman *v.* Fairlie; and that the practice was, that where a party charged himself with the receipt of a fund, he was bound by that charge till he had relieved himself from it by showing a proper application of the money; and that it was not enough for him whose duty it was to know the truth and be ready with information, to leave the application in doubt, by merely expressing ignorance with regard to the charges to which the fund was liable (*l*).

Freeman *v.* Fairlie.

If there is no danger of the property being lost, from the executor being an insolvent or otherwise, a reasonable time will be allowed for bringing the fund into court; and a *longer time will be allowed when the money is in a foreign country (*m*). And if the assets appear to have been invested on an improper security, time will be allowed (which may, in a proper case, be extended from time to time) to enable the executor to realize the security (*n*). And in fixing the day for payment time will be

A reasonable time allowed for payment into court.

Proudfoot *v.* Hume, 4 Beav. 477, *per* Lord Langdale.

(*h*) Wyatt *v.* Sharratt, 3 Beav. 498. Hinde *v.* Blake, 4 Beav. 597. Score *v.* Ford, 7 Beav. 333. Roy *v.* Gibbon, 4 Hare, 65. Ingle *v.* Partridge, 32 Beav. 661: or by setting up the adverse title of a third party: Lord *v.* Purchase, 17 Beav. 171.

(*i*) 3 Meriv. 39.

(*k*) 4 Hare, 65.

(*l*) See also Hinde *v.* Blake, 4 Beav. 597.

(*m*) Roy *v.* Gibbon, 4 Hare, 65.

(*n*) Score *v.* Ford, 7 Beav. 333. Wy-

allowed for the trustee, if he desires it, to show that no reason exists for calling the money into court (*o*).

Relief granted on interlocutory proceeding.

The relief will be confined to the payment of money into court, and the court will not direct any permanent relief such as the repurchase of stock which had been sold by the executor; for that can be done only at the hearing of the cause (*p*).

Though a receiver had been appointed during a litigation in the Probate Court respecting the validity of a will, the Court of Equity refused, on that account alone, to order the person named as executor to pay into court money in his hands belonging to the testator's estate received previously to the appointment of the receiver (*q*).

General rule as to payment in.

The general rule as to payment of money into court is, that the plaintiffs must be solely entitled, or have such an interest jointly with others as to entitle them, on behalf of themselves and of those others, to have the fund secured (*r*).

Applications for—how made.

Applications for the bringing of money or securities into court before judgment are usually made by summons. If opposed the summons is frequently adjourned into court (*s*).

*An executor having been ordered to pay money into court, is not thereby deprived of his right of retainer (*t*), nor of his lien on the fund for his costs (*u*).

Applications for payment out.

The ordinary method of application for payment or transfer out of a fund in court is by petition, but in the following cases the application can be by originating summons:

1. Where there has been a judgment or order declaring the rights to the fund (*x*).

att *v.* Sharratt, 3 Beav. 498. Hinde *v.* Blake, 4 Beav. 599.

(*o*) Hill on Trustees, 571. Hinde *v.* Blake, 4 Beav. 599.

(*p*) Futter *v.* Jackson, 6 Beav. 424. Hill on Trustees, 570.

(*q*) Reed *v.* Harris, 7 Sim. 639. Edwards *v.* Edwards, 10 Hare, App. II. lxiii.

(*r*) Freeman *v.* Fairlie, 3 Meriv. 29. Where part of a residuary estate has been invested on an improper security, and the defendant has an interest therein, the court, on being satisfied that there is no existing claim on the estate, sometimes confines the amount to be paid into court to the share of the plaintiff: Score *v.* Ford, 7 Beav. 333.

(*s*) Dan. Ch. Pr. 1744, 6th edit.

(*t*) *Ante*, p.*887.

(*u*) Blenkinsop *v.* Foster, 3 Younge & Coll. 207, *coram* Alderson, B.

(*x*) R. S. C. Ord. LV. r. 2 (1). As to what amounts to an order declaring rights, see Re Brandram, 25 Ch. D. 366. Re Evan Evans, 54 L. T. 527.

2. Where the title depends only upon proof of the identity, or the birth, marriage, or death of any person (*y*).

3. Cash money or securities not exceeding 1,000*l.* in amount or nominal value, can be applied for by originating summons—

(a) Where they are standing to the credit of any cause or matter (*z*).

(b) Where the money has been paid in under the Legacy Duty Act (*a*).

(c) Where the money has been paid in under the Trustee Relief Acts (*b*).

4. For payment to any person of the dividend or interest on any securities standing to the credit of any cause or matter, whether to a separate account or otherwise (*c*).

Petition or summons.

The application for payment out must be by petition, not by summons, when the application is for payment of a share *less than 1,000*l.* of a fund in court exceeding 1,000*l.* in amount (*d*), or where the fund in court consists of cash less than 1,000*l.* and securities of a less nominal amount than 1,000*l.* but both together exceeding that amount (*e*), and the costs of a petition were allowed where the fund was brought over 1,000*l.* by accrued interest (*f*).

Production of papers, &c.

The general rule as to papers and writings is, that an executor representing an estate should deposit them, for the benefit of the parties interested, in the Central Office (*g*), unless there are other purposes which require that he should retain them in his own hands (*h*). But where the production of documents is required, the application for it must in all cases be made by sum-

(*y*) *Ibid.* If the amount is large a petition should be presented: Re Rhodes, 31 Ch. D. 499. Re Broadwood, 55 L. J. Ch. 646. But North, J., held, in Bates *v.* Moore, 38 Ch. D. 381, that the mere size of the fund was not alone sufficient ground for a petition, unless there was difficulty in the matter as well.

(*z*) R. S. C. Ord. LV. r. 2 (2).

(*a*) See *ante*, p. *1818. R. S. C. Ord. LV. r. 2 (4).

(*b*) *Ibid.* r. 2 (5).

(*c*) R. S. C. Ord. LV. r. 2 (3). As to payment out of court on an originating summons, see R. S. C. Ord. LV. rr. 2 (1) to (9). Ann. Pr. 1893, pp. 911–914. See also Supreme Court Funds Rules, 1886.

(*d*) May *v.* Dowse, W. N. 1884, p. 122. Re Evan Evans, 54 L. T. 527.

(*e*) Re Haworth, W. N. 1885, p. 48.

(*f*) *Ex parte* Trustees of Finsbury, &c. Savings Bank, W. N. 1886, p. 150.

(*g*) R. S. C. Ord. LXI. r. 31. The place for deposit is the General Filing Office, Room 83, Royal Courts of Justice.

(*h*) Freeman *v.* Fairlie, 3 Meriv. 30.

[*1887]

mons at chambers, and the party required to produce will then be ordered to file an affidavit, stating what documents he has, or has had, in his possession or power relating to the matters in question, and to produce them (excepting such as he may by his affidavit object to produce) to the party requiring production (*i*).

13 & 14 Vict. c. 60, The Trustee Act. The Lord Chancellor may make vesting and other orders respecting lands or stock of lunatic trustees, &c.

By stat. 13 & 14 Vict. c. 60 (the Trustee Act), repealing stat. 11 Geo. IV. and 1 Will. IV. c. 60, the Lord Chancellor (s. 3) is empowered to make orders for the vesting of the lands of lunatic trustees and mortgagees in such person or persons, and in such manner and for such estate, as he shall *direct; (s. 4) and to make orders releasing or disposing of contingent rights in lands to which such lunatic trustees or mortgagees shall be entitled. He is also empowered (s. 5) to make orders vesting the right to transfer stock or to sue for and recover any chose in action to which a lunatic trustee or mortgagee may be solely or jointly entitled (*k*); (s. 6) or to transfer stock standing in the name of a deceased person, *whose personal representative is a lunatic or person of unsound mind*, or to sue for and recover a chose in action vested in any such lunatic as the personal representative of a deceased person (*l*).

Court of Chancery may make orders in respect of the estates of infant trustees, &c., and in various other cases.

And the same act (the provisions of which are extended by stat. 15 & 16 Vict. c. 55) enables the Court of Chancery (ss. 7, 8, 9, 10, 11, 12) to make orders vesting the estates, and releasing or disposing of the contingent rights of infant trustees and mortgagees, or of trustees out of the jurisdiction of the court. It further empowers the court (s. 13) to make orders for the vesting of lands when it is uncertain which of several trustees was the survivor, or (s. 14)

(*i*) See Ord. XXXI. r. 14. *Prima facie* evidence in support of a claim will entitle a creditor in an administration suit to an order directing the executors to file an affidavit as to their possession of documents relating to the claim, or to any item in it: Re McVeagh, 1 De Gex, J. & S. 399. The old practice was for the party producing the documents to leave them at the Record and Writ Clerk's Office (now the Central Office). It is now the ordinary practice to produce them at his solicitors' office, but this is only a matter of indulgence and convenience: Prestney *v.* Mayor of Colchester, 24 Ch. D. 379.

(*k*) Where one of three executors of the surviving executor of a testator was of unsound mind, an order was made under this section giving the right to transfer a sum of stock belonging to the estate of the original testator, although the stock still remained standing in the name of the original testator: Re Wacher, 22 Ch. D. 535.

(*l*) Re White, L. R. 5 Ch. 698.

whether the last trustee be living or dead; and (s. 15) in cases where the trustee has died without an heir, and (s. 16) to release lands from the contingent rights of unborn trustees or vest them; and (15 & 16 Vict. c. 55, s. 2, repealing 17th and 18th sections of the Trustee Act) in case of the refusal or neglect of a trustee to convey or release, to make an order for vesting the estate; whilst by sect. 20 of the Trustee Act it is provided, that in every case where the Lord Chancellor or the Court of Chancery shall be enabled to make an order having the effect of a conveyance or assignment of any lands, or having the effect of a release or disposition of the contingent right of any person or persons, born or unborn, it shall also *be lawful for the Lord Chancellor or the Court of Chancery, as the case may be, should it be deemed more convenient, to make an order appointing a person to convey or assign such lands, or release or dispose of such contingent right.

Orders vesting a right to transfer stock.

Similar powers of making orders vesting a right to transfer or recover are by these acts given to the Court of Chancery (13 & 14 Vict. c. 60, s. 22) in cases where the trustees of any stock or chose in action are out of the jurisdiction of the court, or cannot be found, or concerning whom it is uncertain whether they be living or dead, or (15 & 16 Vict. c. 55, s. 3) in the case of an infant solely or jointly entitled to any stock upon any trust; whilst (15 & 16 Vict. c. 55, s. 4, altering sects. 23 and 24 of Trustee Act) if any person shall neglect or refuse to transfer any stock or to receive the dividends or income thereof, or to sue for or recover any chose in action, or any interest in respect thereof, for the space of twenty-eight days next after an order of the Court of Chancery for that purpose shall have been served upon him, it shall be lawful for the Court of Chancery to make an order vesting the right to transfer or recover in such person as the court shall appoint; and on like refusal or neglect of an executor in respect of the transfer of stock standing in the sole name of a deceased person, a similar order may be made.

Bank of England, &c., must obey orders, and will be indemnified.

By the 6th and 7th sections of 15 & 16 Vict. c. 55 (extending the provisions of the 26th section of the Trustee Act), the Bank of England, and all companies and associations whatever, are ordered to obey such orders: and every order so made is declared to be an indemnity to the Bank and to all companies so obeying (*m*).

(*m*) See next page.

[*1889]

Interpretation clause.

By the interpretation clause of the Trustee Act, "The word 'trust' shall not mean the duties incident to an estate conveyed by way of mortgage; but, with this exception, the *word 'trust' and 'trustee' shall extend to and include implied and constructive trusts, and shall extend to and include cases where the trustee has some beneficial estate or interest in the subject of the trust, and shall extend to and include the duties incident to the office of personal representative of a deceased person."

Summons for the appointment of new trustee and for a vesting order.

Prior to 1889 the application to the court to appoint new trustees and for a vesting order was by petition, but now, by Ord. LV. r. 13a, "In all cases in which the Court has jurisdiction to appoint new trustees upon petition, an application may be made to a judge in chambers by summons, and thereupon new trustees may be appointed; and, by the same or by any subsequent orders to be made on the same or any other summons for the purpose, such vesting and other consequential orders may be made as the Court has jurisdiction to make on petition for the appointment of new trustees. Every such summons shall be intituled in the same manner as the petition seeking the like relief ought to have been, and shall be served upon the same persons upon whom the petition ought to have been served."

Duty of executor to keep clear accounts.

It is the bounden duty of an executor to keep clear and distinct accounts of the property which he is bound to administer: If, therefore, he chooses to mix the accounts with those of his own trading concerns, he cannot thereby protect himself from producing the original books, in which any part of those accounts may be inserted: It is a more difficult question, as between an executor, bound to produce, and his partner in trade: but if the partners have *permitted* him to mix the accounts, it seems they cannot afterward object to the production: clearly they cannot do so, in a case where the executor has admitted having lent to his firm part of the trust property, and that the firm has been dealing with it (*n*).

(*m*) The Bank of England at first refused to act on vesting orders made in chambers under Ord. LV. r. 13a, but it now acts on them: Ann. Pr. 1893, p. 928.

(*n*) Freeman *v.* Fairlie, 3 Meriv. 43, 44. The court, however, will not order a defendant, who has a joint possession of a document with some one else not before the court, to produce the document itself: Taylor *v.* Rundell, Cr. & Ph. 111.

*For instance, in Freeman *v.* Fairlie (*o*), an executor in India, coming to England, and after twenty-one years, being called upon to account, alleging that he had left his books, &c., behind him in India, was ordered to produce copies of all entries in such books, &c., within six months, though it was impossible he could do so, in order that the court might have an opportunity from time to time of seeing that he had used proper diligence.

Costs of furnishing accounts.

Trustees can, where they are required to furnish accounts in respect of their trust estate, demand to be paid or to be guaranteed the costs of doing so, before complying: it makes no difference that one of the trustees is a solicitor (*p*).

What an executor is liable to account for under the usual administration decree.

Under the usual administration decree obtained on a writ or originating summons, an executor or administrator can only be charged for actual receipt by himself, or his agent, not for a default of his co-trustee (*q*). The practice is to make executors and administrators only account for the money they themselves have received, not for what they might have received, but for their own default; to make them account, on the latter footing, a special case must be made (*r*), and the plaintiff must aver and prove at least one act of willful default (*s*), and if what is averred is admitted, the practice is only to make the common decree, adding a submission by the executor to account with respect to the matters so admitted (*t*).

Willful default.

Order on footing of willful default can be made at any stage of action.

An order charging willful default can be made at any time during the action (*u*) on a proper case being shown (*x*).

After common decree leave necessary.

*Where a common administration order has been obtained against a defendant, the leave of the court must be obtained, in order to continue the action against him on the footing of willful default (*y*).

How raised where no pleadings.

In actions in which there are no pleadings a charge of willful default can be raised by affidavit (*z*).

(*o*) 3 Meriv. 44.

(*p*) Re Bosworth, 58 L. J. Ch. 432.

(*q*) Re Fryer, 3 K. & J. 317. Blakeley *v.* Blakeley, 1 Jur. N. S. 368.

(*r*) Shepherd *v.* Towgood, T. & R. 379, 388. Pybus *v.* Smith, 1 Ves. 193. Barber *v.* Mackrell, 12 Ch. D. 538. But see Bulstrode *v.* Bradley, 3 Atk. 582.

(*s*) Sleight *v.* Lawson, 3 K. & J. 292. Re Youngs, 30 Ch. D. 431.

(*t*) Wildes *v.* Dudlow, W. N. 1870, p. 231.

(*u*) This is the modern practice; the old practice did not allow this to be done; see Seton, 4th edit. p. 477.

(*x*) Job *v.* Job, 6 Ch. D. 562. Mayer *v.* Murray, 8 Ch. D. 424. Barber *v.* Mackrell, 12 Ch. D. 534.

(*y*) Laming *v.* Gee, 10 Ch. D. 715.

(*z*) Barber *v.* Mackrell, 12 C. D. 534.

[*1891] [*1892]

If the statement of claim alleges willful default, but the judgment at the trial gives no relief on that footing, but does not dismiss the claim for that relief, the court can, at any subsequent stage of the proceedings, upon evidence of willful default, direct further accounts and inquiries on that footing (*a*).

Not asked for at judgment.

Where the plaintiff by his statement of claim alleges willful default, he must be prepared to support his allegations at the hearing; he has no right to insist on the question of willful default being left to be decided at some subsequent stage of the action (*b*).

Allegations of willful default must be proved at hearing;

The burden of proof is on the party alleging willful default, and he must show not only a loss, but a loss under such circumstances as to show default on the part of the executor or administrator (*c*).

burden of proof of willful default:

Particulars of the allegations of willful default should be given in the pleading (*d*).

particulars of:

Accounts on the footing of willful default cannot be obtained under Ord. XV. (*e*).

If the plaintiff's demand be uncontested or proved, and the executor admits assets, the plaintiff is entitled at the hearing to an immediate order for payment without taking the accounts (*f*). The same doctrine prevails though the exe*cutor denies assets in hand at the time of filing his answer, if he also discloses that he had at one time sufficient assets, but that he has since misapplied them (*g*). An admission of assets for the payment of a legacy is an admission of assets for the purposes of the suit, and extends to costs, if the court think fit to give them (*h*).

When the court will decree payment of the plaintiff's demand without first decreeing an account:

(*a*) Re Symons, 21 Ch. D. 757.

(*b*) Smith *v.* Armitage, 24 Ch. D. 727.

(*c*) Re Brier, 36 Ch. D. 238.

(*d*) Re Anstier, 54 L. J. Ch. 1104. See also R. S. C., Ord. XIX. r. 6, and Forms, App. "C." s. 2, Nos. 2 and 9.

(*e*) Re Bowen, 20 Ch. D. 538.

(*f*) Woodgate *v.* Field, 2 Hare, 211. Where the answer admitted assets, but insisted that, under the circumstances stated, the legacy sought to be recovered had been paid, it was held that the plaintiff had a right to read the passage admitting the assets, without reading that as to the payment of the legacy; Connop *v.* Hayward, 1 Y. & Coll. Ch. C. 33. An admission of assets by the executor's answer is waived by the plaintiff's going on to an account of assets, and procuring a receiver to be appointed: Wall *v.* Bushby, 1 Bro. C. C. 484.

(*g*) Rogers *v.* Soutten, 2 Keen, 598.

(*h*) Philanthropic Society *v.* Hobson, 2 M. & K. 357. If there are several executors and some admit assets, yet

[*1893]

Again, if it is charged that the executor has rendered himself personally liable to pay the plaintiff's debt or legacy by an admission of assets made before suit, or by any other means, and the plaintiff can sustain this allegation, he will entitle himself to a decree for payment at once (*i*). And the general rule is, that an admission of assets by an executor or administrator can never be retracted in a Court of Equity, unless a case of mistake be most clearly established (*k*). If, however, a strong case be made out, this may enable the court to relieve him from the admission (*l*): as if the money were in a banker's hands, who fails: But the executor or administrator must clearly prove the mistake, and show that the circumstance, on which he built his admission, failed (*m*).

where the executor has made himself personally liable by admitting assets, &c.

*The admission of assets by an executor will not preclude creditors from coming on a fund specifically appropriated for their benefit, although that fund may have been disposed of to a purchaser (*n*).

With respect to what amounts to an admission of assets, it was held in a case (*o*), where the deceased gave money upon mortgage to a charity in Ireland, that his executrix by her own will attempting to provide other means for payment of that legacy, and stating as a reason that his personal estate was out on mortgage, thereby admitted assets of her testator (*p*). Payment of interest for a legacy by the executor, from time to time, will be evidence of assets, though a single instance of payment of interest will not (*q*). So where executors from time to time, had made some payments on account of principal and interest on a legacy, and,

what is an admission of assets.

an account may be decreed against the rest: Norton *v.* Turvill, 2 P. Wms. 145. Where in an examination put in by two executors, it was stated that their receipts had been joint, but it appeared by affidavit, that that statement was made through mistake and inadvertence, and that one of the executors had, in fact, received nothing, liberty was given to him to put in a supplemental affidavit, to correct the mistake: Hewes *v.* Hewes, 4 Sim. 1.

(*i*) Barnard *v.* Pumfrett, 5 M. & Cr. 63. Dimsdale *v.* Dudding, 1 Y. & Coll. Ch. C. 265.

(*k*) Drewry *v.* Thacker, 3 Swanst. 548. Roberts *v.* Roberts, cited 1 Bro. C. C. 487.

(*l*) See Foster *v.* Foster, 2 Bro. C. C. 619. Young *v.* Walter, 9 Ves. 365.

(*m*) Horsley *v.* Chaloner, 2 Ves. Sen. 85, *post*, p.*1896.

(*n*) Curtis *v.* Blow, 2 Barn. & Adol. 426.

(*o*) Campbell *v.* Lord Radnor, 1 Bro. C. C. 271. Barnard *v.* Pumfrett, 5 M. & Cr. 70.

(*p*) See also Elliott *v.* Holwell, 1 Cas. temp. Lee, 574.

(*q*) Corporation of Clergymen's Sons *v.* Swainson, 1 Ves. Sen. 75. Barnard *v.* Pumfrett, 5 M. & Cr. 63, 70, by Lord

about nine years after the testator's death, passed their accounts at the Legacy Duty office, showing a considerable residue; Lord Langdale held, that the legatee was entitled to an immediate decree for payment of the legacy, without first taking an account of the testator's estate (*r*).

The payment of interest on a legacy, or payment of a legacy not conclusive.

*But in Postlethwaite *v.* Mounsey (*s*), it was held by Wigram, V.-C., that payment by the executor of the interest of a legacy to the tenant for life under the will was not conclusive as an admission of assets by the executor; but that such payment might be explained as having been made by mistake, or for other reasons or causes; and that in that case the usual account of assets might be directed: And his Honor observed, that it would be difficult to hold that the payment of one legacy would, of itself, bind the executor to pay all the legacies given by the will: Suppose a case in which small legacies were given to servants, and the executor chose, on his own responsibility, to pay those legacies at once, without reference to the state of the assets, it would be hard to say that he had thereby conclusively bound himself to pay all the legacies given by the will. In the subsequent case of Savage *v.* Lane (*t*), the same learned judge held, that, at all events, where the bill in a creditor's suit does not specifically charge the executor with having made himself personally liable, but prays that an account may be taken and the estate administered, the executor's admission in his answer that he has paid certain legacies is not such

Cottenham. Atty.-Gen. *v.* Chapman, 3 Beav. 255. Atty.-Gen. *v.* Higham, 2 Y. & Coll. Ch. C. 634. But payment of the interest of a specific or demonstrative legacy, when that payment is clearly not made out of the general assets, nor a payment referable to the general assets, is not an admission of general assets: Severs *v.* Severs, 1 Sm. & G. 400. Executors having invested an infant's legacy in their partnership concern, it was held that the entry by them in the partnership books of the amount of the legacy to the credit of the legatee was a sufficient admission of assets, there being no evidence that the entries were mistaken, and the course of conduct observed being consistent with them: Townend *v.* Townend, 1 Giff. 201. For an instance in which a similar entry was held not to amount to an admission of assets, see Hutton *v.* Rossiter, 7 De Gex, M. & G. 9.

(*r*) Whittle *v.* Henning, 2 Beav. 396. See further, as to admission of assets by having given a legatee the legacy office receipt for duty on the legacy, Lazonby *v.* Rawson, 2 Sm. & G. 267. 4 De Gex, M. & G. 556, S. C.

(*s*) 6 Hare, 33, note (*a*). See also Cadbury *v.* Smith, L. R. 9 Eq. 37.

(*t*) 6 Hare, 32. See also Cadbury *v.* Smith, L. R. 9 Eq. 41. Billing *v.* Brogden, 38 Ch. D. 546.

an admission of assets as to entitle the plaintiff to a decree without taking the account.

The general rule, however, is that an admission of assets by the executor to one claimant on them is an admission to all (*u*). General rule.

In Holland *v.* Clark (*x*), Sarah Clark bequeathed a legacy of 150*l.* to Susannah C., when she should attain 21: The testatrix died in 1811, and the legatee did not attain 21 till several years afterward, and she then married: In 1825 the executors signed and gave to her husband this memo*randum: "We separately and jointly acknowledge to owe to George Holland the sum of 150*l.*, being a legacy left to his wife by the late Sarah Clark, and 50*l.* interest thereon:" And it was held by Knight-Bruce, V.-C., that, under the circumstances, this memorandum amounted to an admission of assets by the executors.

The authorities as to the probate stamp being admissible, and its effect in evidence as to the amount of assets, have already been examined (*y*).

It only remains to be noticed that an admission is always susceptible of explanation. Thus, in Payne *v.* Little (*z*), Romilly, M.R., observed, that every admission of assets made by an executor, whether it be made by his acts or by an express admission in words, must have reference to the circumstances which he was then acquainted with, and if "the circumstances on which he built his admission fail him" (an expression used by Sir John Strange in Horsley *v.* Chaloner (*a*)), then the admission fails also, and he cannot be bound by an admission made under circumstances with which he was not acquainted.

If an executor changes the nature of the testator's estate, the general rule is, that this is a conversion; and as money has no ear-mark, it cannot be followed (*aa*); but the executor by such transactions has made himself liable to a *devasta-* Remedy for *devastavit.*

(*u*) Cook *v.* Martyn, 2 Atk. 2. Barnard *v.* Pumfrett, 5 M. & Cr. 70, by Lord Cottenham.

(*x*) 2 Y. & Coll. Ch. C. 319, conf. Stephens *v.* Venables, 31 Beav. 124.

(*y*) See *ante*, p.*1855.

(*z*) 22 Beav. 69. See also Cadbury *v.* Smith, L. R. 9 Eq. 41.

(*a*) 2 Ves. Sen. 83.

(*aa*) That is, it cannot be followed in the hands of a stranger to the trust, although it can be followed in the hands of the trustees and those claiming under him. See Re Hallett's Estate, 13 C. D. 696.

vit (*b*), for which the party injured must seek satisfaction out of the executor's own effects (*c*). If an executor purchases estates with the assets, and takes the conveyance in his own name, without the trust appearing on the face of the deeds, the estate will not be liable to the trusts, although he die *insolvent, unless the application of the purchase money can be clearly proved (*d*).

But if an executor, for the benefit of the testator's estate, should invest part of it in the funds, or transfer money from one stock to another, this is not a conversion, but it may still be followed, as much as if it had continued in the same condition as at the testator's death (*e*).

Following assets.

The general question, as to the right of creditors and legatees to follow the assets into the hands of the person to whom the executor has aliened them, has been investigated in a former part of this work (*f*).

In Skinner *v.* Sweet (*g*), it appeared that an executrix, in respect of her receipt as such, was considerably indebted to the estate, and that she had an annuity of 250*l.* given to her by the will: Sir John Leach, V.-C., directed, that her annuity, as it became due, should be applied in payment of the debt due to the estate, with liberty to apply to the court when the debt due to the estate should be discharged. So where an executor assigns his reversionary legacy, the assignee takes it subject to the equities which attached to the executor; and therefore if the executor, though subsequently to the assignment, wastes the testator's assets, the assignee cannot receive the legacy till satisfaction has been made for the breach of trust (*h*).

Party injured, a simple contract creditor only.

The party injured by a *devastavit* is but a simple contract creditor of the executor (*i*), and the claim is consequently barred after the lapse of six years by the Statute of Limita-

(*b*) Waite *v.* Whorwood, 2 Atk. 159. A married woman executrix was, after the death of her husband, held liable for a *devastavit* committed by him during their joint lives: Soady *v.* Turnbull, L. R. 1 Ch. 494.

(*c*) Charlton *v.* Low, 3 P. Wms. 330.

(*d*) 2 Sugd. Vend. & Purch. 148, 9th edit. See Kendar *v.* Milward, 2 Vern. 440. Kirk *v.* Webb, Prec. Chanc. 84. Deg *v.* Deg, 2 P. Wms. 414, 415. Ryall *v.* Ryall, 1 Atk. 59. Wilkins *v.* Stevens, 1 Y. & Coll. 431.

(*e*) 2 Atk. 159.

(*f*) *Ante*, pp. *801, *802. See also Downes *v.* Power, 2 Ball & B. 491. Silver *v.* Stein, 1 Drewr. 295. Collinson *v.* Lister, 20 Beav. 356.

(*g*) 3 Madd. 244.

(*h*) Morris *v.* Livie, 1 Y. & Coll. Ch. C. 380. *Ante*, p.*1261. See also Barnett *v.* Sheffield, 1 De Gex, M. & G. 371.

(*i*) Charlton *v.* Low, 3 P. Wms. 331.

tions (*k*), but this does not, or did not, before the Trustee *Act, 1888, apply to an action by a beneficiary against the executor (or his estate) who had committed the *devastavit*, as the debt arose from a breach of trust on his part, and from this the Statute of Limitations did not protect him (*l*).

Bankrupt or insolvent executor.

In Geary *v.* Beaumont (*m*), a specific legacy was given to an executor, who afterward became bankrupt, and committed a *devastavit:* The subject of the specific bequest was sold by his assignecs: and Sir W. Grant held that the produce in their hands was not specifically liable to make good the *devastavit*, in favor of the parties beneficially entitled under the will, but that such parties were only entitled to prove to the amount of the *devastavit.*

If an executor becomes bankrupt, having wasted the assets, a proof for the *devastavit* can be taken in under the bankruptcy (*n*). An executor and trustee having committed a *devastavit*, cannot prove under his own bankruptcy without obtaining an order from the court (*o*). Generally speaking, such order will be made on the application of a bankrupt who is sole executor (*oo*), but, if leave to prove be given, the dividends should be secured and not allowed to come into the bankrupt's hands (*p*).

Debt due under a *devastavit*, due from what time.

In the case of an executor committing a *devastavit*, and a decree for payment of the amount, the debt is considered as due from the time of the *devastavit*, and not from the date of the decree; and therefore, where a person was committed under an attachment for breach of a writ of execution of a decree for payment of money on account of a *devastavit*, it was held that as he had, between the time of the *devastavit* *and the date of the decree, taken the benefit of the Insolvent Debtors Act, and had been ordered to be discharged by the Court of Quarter Sessions,

(*k*) Thorne *v.* Kerr, 2 Kay & J. 54.

(*l*) Re Marsden, 26 Ch. D. 783. As to the effect of the Trustee Act, 1888, see *post*, p.*1928.

(*m*) 3 Meriv. 431.

(*n*) Toller, 429.

(*o*) See *Ex parte* Colman, 2 Dea. & Ch. 584. Where the bankrupt is one of several executors, and has before his bankruptcy received a part of the assets, the other executors may prove the amount against his estate: *Ex parte* Brown, 1 Dea. & Ch. 118. *Ex parte* Phillips, 2 Deac. 334.

(*oo*) *Ex parte* Shaw, 1 Glyn & Jam. 127. *Ex parte* Wyatt, 2 Deac. & Ch. 211.

(*p*) *Ex parte* Leeke, 2 Bro. C. C. 597. *Ex parte* Shaw, 1 Glyn & Jam. 127. *Ex parte* Colman, 2 Deac. & Ch. 584. *Ex parte* Moody, 2 Rose, 413.

[*1898] [*1899]

he might be brought up on a *habeas corpus* before the chancellor, and discharged (*q*).

A defaulting executor or administrator who becomes bankrupt is protected from attachment by sect. 10 of the Bankruptcy Act, 1883 (*r*), and if he becomes bankrupt after he has been attached he may be released; he is protected from arrest by the order in bankruptcy (*s*).

Interference with the discretion of executors, &c.

The issue of a summons under rule 3 of order LV. does not interfere with or control any power or discretion vested in any executor, administrator, or trustee, except so far as such interference or control may necessarily be involved in the particular relief sought (*t*).

Effect of a judgment for administration.

Even a judgment for administration does not deprive executors or trustees of the right to exercise a discretionary power vested in them (*u*), except so far as the exercise conflicts with the order (*x*); for instance, they can exercise a power of appointing new trustees (*y*): but the court will see that improper persons are not appointed, and if a person of whom the court does not approve is appointed, it will call on the trustees to make a fresh appointment (*z*). The fact that the decree directs the appointment of new trustees does not take from the trustees their right of appointment (*a*). An administration decree does not prevent trustees from exercising a power of sale (*b*).

Discretionary power given to trustees.

Where a testator has given a pure discretion to trustees as to the exercise of a power, the court will not enforce the exercise of the power against the wish of the trustees,† but it *will prevent them from exercising it improperly (*c*); and even where the power is coupled with a trust or duty, the court will enforce the proper and timely exercise of the power, but will not interfere with the discretion of the trustees as to the particular time or manner of their *bona fide* exercise of it (*d*).

(*q*) Wheldale *v.* Wheldale, 16 Ves. 376. 3 Madd. Pract. 458, 2nd edit.

(*r*) Cobham *v.* Dalton, L. R. 10 Ch. 655. Nowell *v.* Nowell, W. N. 1876, p. 248. Re Neil, W. N. 1882, p. 46.

(*s*) Re Manning, 30 Ch. D. 480.

(*t*) R. S. C. Ord. LV. r. 12.

(*u*) Tempest *v.* Lord Camoys, 21 Ch. D. 571, 576, note. Re Gadd, 23 Ch. D. 134. Re Burrage, 62 L. T. 752.

(*x*) Re Hall, 33 W. R. 508.

(*y*) Tempest *v.* Lord Camoys, *supra*. Re Gadd, *supra*.

(*z*) Re Gadd, *supra*.

(*a*) Re Gadd, *supra*.

(*b*) Re Mansel, 33 W. R. 727.

† See American note at end of this chapter.

(*c*) Tempest *v.* Lord Camoys, *supra*.

(*d*) Re Burrage, 62 L. T. N. S. 752.

The remedy of a creditor of the business for a debt incurred since the death of the testator or intestate, is against the executor or administrator personally, and not against the estate of the deceased (*e*); and the creditor's remedy is by action at law against the executor or administrator, and he has no right to have the estate of the deceased administered (*f*). But a creditor of the business whose debt has been incurred since the decease, can make the executor render to him an account of the assets of the deceased which have been employed in the business since the death (*g*).

Remedy of a creditor of the business.

A creditor's right to an account of the assets employed in a business.

As has been pointed out in the chapter on Remedies for an Executor in Equity, where the executor or administrator properly carries on the business of the deceased, he is entitled to be indemnified out of the assets, which are authorized to be, or can be, otherwise properly applied (*h*) for the purposes of the business. In such case, creditors whose debts have been incurred since the death of the deceased, are entitled to stand in the place of the executor or administrator, and to claim that the fund, out of which he is entitled to indemnity, shall be applied in payment of their debts (*i*).

Remedy of a creditor where the business is properly carried on.

Where the executor is in default to the specific trust estate he is authorized to employ in the trade, the creditors of the trade are in no better position than the executor himself, and *as he is only entitled to be indemnified against the debt he has incurred in carrying on the trade upon the terms of making good his default, the creditors are only entitled to have their debts paid out of the specific assets when the default is made good (*k*).

Where executor in default.

Where neither the whole nor any specific part of the estate is properly applicable to carrying on the trade, creditors of the business have no right to recover their debt out of the trust funds (*l*), but they are entitled to any interest the executor may have in such trade as against

Where no specific part of estate can be employed in carrying on the business:

(*e*) Farhall *v.* Farhall, L. R. 7 Ch. 123.

(*f*) Owen *v.* Delamere, L. R. 15 Eq. 134. Strickland *v.* Symons, 26 Ch. D. 245.

(*g*) Thompson *v.* Dunn, L. R. 5 Ch. 573.

(*h*) *E.g.*, where the business is only carried on for the purpose of being realized.

(*i*) *Ex parte* Garland, 10 Ves. 120. *Ex parte* Edmonds, 4 D. F. & J. 488.

(*k*) Re Johnson, 15 Ch. D. 548.

(*l*) Strickland *v.* Symons, 22 Ch. D. 666. 26 Ch. D. 245.

the trust estate, *e.g.*, the right to be repaid moneys he has advanced or become liable to pay in respect of the business (*m*).

Right of indemnity as against creditors of the testator.

The executor is, as against the beneficiaries, entitled to be indemnified by the trust estate against the debts incurred by him in carrying on the trade out of the specific part of the testator's estate, which he is authorized by the will to employ in the trade, but this right to indemnity does not apply as against the creditors of the testator unless such creditors had knowledge that the testator's business was being carried on by the executor, and have acquiesced in such trading (*n*).

Dowse *v.* Gorton.

Where the executor of a deceased trader had carried on his business for three years after his death, in accordance with the provisions of his will and with the assent of the testator's creditors, the Court of Appeal held that the executors had a right to be indemnified against all liabilities incurred by them in carrying on the trade out of the assets acquired subsequently to the testator's death, and that their right to indemnity was confined to such assets, and it also held that the trade creditors of the executors were entitled to stand in the place of the executors in enforcing their claim (*o*). The House of Lords, on appeal, held that, as the creditors of the testator had acquiesced in the business being carried on by *the executors, the executors were entitled to be indemnified out of the testator's estate against the liabilities which they had properly incurred in carrying on the business, and that their right to indemnity was not limited to the assets acquired subsequently to the testator's death, and that the executors were entitled to indemnity, not only as against the beneficiaries, but also as against the testator's creditors (*p*).

Priority of creditors of the executors.

The effect of giving the executors so wide a right of indemnity is to give the creditors of the business, subsequent to the testator's death, a priority over the creditors of the testator in cases where they acquiesced in the trading. This makes it exceedingly important for the creditors of a deceased trader to protect themselves against the risk of the executors carrying on the business at a loss by requiring the estate to be administered without delay.

In cases like Dowse *v.* Gorton, where the business has been carried on after the testator's death, and the estate is insolvent, the rights

(*m*) Re Evans, 34 Ch. D. 597.

(*n*) Dowse *v.* Gorton, [1891] A. C. 190.

(*o*) Re Gorton, 40 Ch. D. 536.

(*p*) Dowse *v.* Gorton, [1891] A. C. 190.

[*1902]

of the creditors of the testator, and the creditors of the executors, will conflict, and the question whether a creditor of the one class or the other is to have the conduct of the administration proceedings will probably be governed by the extent to which the estate is deficient. If, for example, the estate is likely to be sufficient only to pay the creditors of the executors, it may be that the conduct of the proceedings will be given to one of them, but if there is likely to be a surplus after satisfying the claims of the creditors of the executors, the conduct of the proceedings should be given to a creditor of the testator as having the greater interest in the administration.

Conduct of proceedings.

In claims by creditors against the estate of a dead man the court looks with suspicion upon a claim which is supported only by the uncorroborated evidence of the claimant (*q*), but there is no rule of law which precludes a claimant from recovering against the estate of a deceased person on his own *testimony without corroboration, although the court will in general require such corroboration (*r*).

Uncorroborated claim.

It has been shown, in a previous part of this work (*s*), under what circumstances an executor may retain a legacy, by way of set-off against a debt due from the legatee to the testator (*t*). But the executor cannot set off, against a demand upon him as executor, a debt due to him individually (*u*).

Set-off.

The usual form of relief now given by the Chancery Division against an executor or administrator is to compel him to properly account for the assets of his testator or intestate, and to see that these assets are properly distributed

Meaning of "administration action":

(*q*) Hill *v.* Wilson, L. R. 8 Ch. 888.

(*r*) Re Hodgson, 31 Ch. D. 177. See also Re Farman, 57 L. J. Ch. 637, 639. See *ante*, pp. *1658, *1659.

(*s*) *Ante*, p. *1171 *et seq.* See also Richards *v.* Richards, 9 Price, 219.

(*t*) In Re Knapman, 18 Ch. D. 300, legatees brought an action against the executor, seeking revocation of probate. While this action was pending they mortgaged their shares. They failed in the action, and were ordered to pay costs. Subsequently they brought an action for the administration of the estate. The executor was held entitled to set-off the costs in the probate action against the legacies, notwithstanding the incumbrances. But see Re Harrald, 52 L. J. Ch. 436.

(*u*) Whitaker *v.* Rush, Ambl. 407. Medlicot *v.* Bowes, 1 Ves. Sen. 208. Gale *v.* Luttrell, 1 Younge & Jerv. 180. *Ante*, pp. *1781, *1846. But in —— *v.* Wood, 2 P.Wms. 131, money lent and goods delivered by the executor to the legatee were held to be in part payment, and the court said that the executor, if sued in equity for the legacy,

[*1903]

amongst the persons entitled to them, namely, first, the creditors of the deceased, and, secondly, the beneficiaries under the will or the persons entitled under the intestacy.†

how commenced:

An administration action, like other actions, can usually be commenced by the issue of a writ of summons, but the rules of the Supreme Court, 1883, provide that, in some cases, creditors or beneficiaries can commence proceedings against executors or administrators by originating summons, and in such proceedings obtain full or partial administration of the dead man's estate.

originating summons.

Rules 3 and 4 of Ord. LV. of the rules of the Supreme *Court, 1883, dealing with originating summonses, will be found set out in the chapter on remedies for an executor in equity (*v*).

When a creditor can commence proceedings by summons.

A creditor is entitled to obtain an order for administration upon an originating summons, where the dispute as to his debt depends on a question of law, but not where his debt depends on disputed facts (*x*); in the latter case, he should commence proceedings by writ of summons.

Proceedings before probate or letters of administration granted must be by writ:

Ord. LV. r. 4, only authorizes an administration summons to be taken out by a creditor against executors, administrators, and trustees, and an originating summons taken out by a creditor against an executor before administration is entirely bad (*y*).

by annuitant.

An annuitant whose annuity is not in arrear, is not a creditor, and cannot apply for administration of the estate of the deceased, even although the estate of the deceased is not sufficient to pay the estimated value of the annuity as well as the other debts and liabilities (*z*).

Matters which can be decided on an originating summons.

There is only jurisdiction on an originating summons to decide such matters as could have been decided in an administration suit, as, for instance, points relating to the administration of the estate and questions between executors and legatees, there is no jurisdiction on such a summons to decide questions as against persons claiming adversely to the

might have insisted that the legatee had received so much of it by money and goods.

† See American note at end of this chapter.

(*v*) See *ante*, pp. *1806, *1808.

(*x*) Re Powers, 30 Ch. D. 291.

(*y*) Re Leask, W. N. 1891, p. 159.

(*z*) Re Hargreaves, 44 Ch. D. 236.

estate (*a*), or questions as to legal devises or between legal devisees (*b*).

Unless the objection to the want of jurisdiction is taken in the court below, it appears that the Court of Appeal will not entertain the objection (*c*), and the objection must be taken in chambers or the defendant will not be allowed his costs of the adjournment into court (*d*).

When the objection to the jurisdiction must be taken.

*It is questionable whether an originating summons is a proper proceeding on which to raise a question of breach of trust against trustees (*e*).

An originating summons should not be taken out to obtain payment of a disputed debt where the dispute turns on a matter of fact, but when the question depends merely on a question of law, it will be decided on an application by originating summons without putting the parties to another proceeding (*f*).

Determining a disputed debt on originating summons.

Notice should be given of intention to raise, on the hearing of the summons, any question arising under the Statute of Frauds (*g*). The notice should be given by letter or affidavit.

Notice of intention to raise Statute of Frauds.

In order to prevent inconvenient preference in the administration of the assets, as well as to avoid the burden which several suits by several creditors could not fail to bring on the fund to be administered, a Court of Equity always allowed a creditor to sue on behalf of himself and the other creditors of the deceased, and has thereupon directed a general account of the estate and debts to be taken against the executor or administrator (*h*), or, if assets were admitted, and the

Practice in an administration action.

A creditor's action.

(*a*) Re Royle, 43 Ch. D. 18. Re Bridge, 56 L. J. Ch. 779. Re Gladstone, W. N. 1888, p. 185.

(*b*) Re Carlyon, 56 L. J. Ch. 219. Re Davies, 38 Ch. D. 210.

(*c*) Re Turcan, 58 L. J. Ch. 101.

(*d*) Re Davies, *supra*.

(*e*) Kekewich, J., in Re Weall, 37 W. R. 779. But see Ann. Pr. 1893, p. 919. See also Re Giles, 43 Ch. D. 391.

(*f*) Re Powers, 30 Ch. D. 291. See Ord. LV. r. 3, set out in the chapter on Remedies for an Executor in Equity, p. *1806.

(*g*) Re Shearman, 2 Times Rep. 236.

(*h*) Mitf. Pl. 193, 5th edit. A creditor having *debitum in præsenti solvendum in futuro* may maintain such a suit: Whitmore *v.* Oxborrow, 2 Y. & Coll. Ch. C. 13: And so may a claimant under a voluntary covenant: Watson *v.* Parker, 6 Beav. 283, note (*n*). After a decree in the suit, the executor cannot do any act to affect the relative rights of creditors: By Sir John Leach, M.R., in Shewen *v.* Vandenhorst, 2 Russ. & M. 75. 1 Russ. & M. 347, S. C.

debt admitted or proved, has made an immediate decree for payment (*i*).

A legatee's action.

Upon the same principle a legatee has always been permitted to sue on behalf of himself and other legatees: and, even under the old practice, a bill has been admitted by a *person claiming under a general description on behalf of himself and the other persons equally entitled under the same description (*k*).

Remedy in the County Court.

Creditors, legatees (whether specific, pecuniary, or residuary), devisees (whether in trust or otherwise), heirs-at-law or next of kin, can bring actions against executors or administrators in the County Court for an account or administration.

Limit of jurisdiction in the County Court.

The jurisdiction of the County Court is, for this purpose, limited to cases, in which the personal or real, or personal and real estate, against or for an account or administration of which the demand may be made does not exceed in amount or value the sum of 500*l.* (*l*).

Execution of trusts.

The County Court has also jurisdiction in claims for the execution of trusts, in which the trust estate or fund does not exceed in amount or value 500*l.* (*m*).

Transfer from the Ch. Div. to the County Court.

The Chancery Division has concurrent jurisdiction in the above matters with the County Court. Where an action is commenced in the Chancery Division which might have been commenced in the County Court, any of the parties can apply for its transfer to the County Court, and the judge has power on such an application, or without such an application, to make an order transferring the action to the County Court, and thereupon the action proceeds in the County Court as if originally brought there (*n*). It has not been the practice to make such an order of transfer without special reason (*o*).

Creditor suing on

Where administration of personal estate only is sought, a creditor suing need not state himself as suing *on behalf of *him-*

(*i*) Woodgate *v.* Field, 2 Hare, 211.

(*k*) Mitf. Plead. 169, 4th edit. The legatee of an annuity charged upon residue is entitled to administer: Wollaston *v.* Wollaston, 7 Ch. D. 58.

(*l*) 51 & 52 Vict. c. 43, s. 67, sub-s. 1.

(*m*) 51 & 52 Vict. c. 43, s. 67, sub-s. 2. In general the action must be commenced in the court within the district of which any of the defendants dwell or carry on business, or live in, or in the court of the district in which the defendants or one of them dwell or carried on business at any time within six calendar months next before the commencement of the action: 51 & 52 Vict. c. 43, s. 74, and Ann. County Courts Practice, 1893, pp. 68, 538.

(*n*) 51 & 52 Vict. c. 43, s. 69.

(*o*) Picard *v.* Hine, 18 L. T. 704.

self and all the other creditors of the deceased (*p*), and the late Master of the Rolls said it was no longer the practice to sue in such form (*q*); but there is nothing in the rules of the Supreme Court to prevent such a form of action from being adopted, and in practice the plaintiff very often sues in that form. A creditor who sues *on behalf of himself and all other the creditors* is entitled, where the estate proves insufficient for payment of debts, to costs, as between solicitor and client (*r*), and until it is decided that the use of the words is immaterial, it will be wise where a creditor is suing to use this particular form of words.

behalf of himself and all the other creditors.

"If a creditor files a bill on behalf of himself and all the other creditors, and it turns out that the estate applicable to the payment of debts is insufficient, the estate belongs to the creditors exclusively; and, therefore, if a creditor has, for the benefit of all the other creditors, instituted a suit, in which he has recovered a fund, it is extremely unreasonable that the fund which would be divisible among the creditors *pro rata*, should be applied in payment of debts without recouping that creditor what he has properly expended in recovering the fund, and he is clearly entitled to his costs as between solicitor and client, and not as between party and party only" (*s*).

Right of creditor suing on behalf of himself and other creditors to costs:

It is sufficient, if it appears from the statement of claim, that the creditor sues on behalf of all other creditors, although it does not appear on the writ, and the writ need not be amended (*t*).

The rule applies equally to the case of a creditor who obtains the conduct of an action originally commenced by a legatee or next of kin (*u*).

or where he obtains conduct of action.

*Where a creditor sues for administration of the real and personal estate of a testator or intestate, and there is no devise of the real estate to trustees with power to sell and give receipts, it appears that the writ must be indorsed with a claim by the plaintiff "on behalf of himself and all other creditors" (*x*).

Creditor must so claim where there is undevised real estate.

(*p*) Bray *v.* Tofield, 18 Ch. D. 554. Re Blount, 27 W. R. 865.

(*q*) In Bray *v.* Tofield, *supra.*

(*r*) Re Richardson, 14 Ch. D. 611. Re McRea, 32 Ch. D. 613.

(*s*) Kindersley, V.-C., in Thomas *v.* Jones, 1 Dr. & Sm. 134, 136. Cited and approved of by Kay, J., in Re McRea, 32 Ch. D. 613, 615.

(*t*) Eyre *v.* Cox, 24 W. R. 137.

(*u*) Re Richardson, 14 Ch. D. 611.

(*x*) Re Royle, 5 Ch. D. 540. See also Re Vincent, 26 W. R. 94.

Staying proceeding in another action.

There is nothing to prevent other creditors or legatees from instituting a second action for administration; and as it is possible that, before the order, the litigating creditor may stop his action, the court permits the actions to go on together until a decree in one of them is obtained (*y*). So, also, in the case of several persons claiming under the same general description. And when the usual order has been obtained in one of such actions, if another action is instituted, praying no further relief than might be had in the former action, the parties to such former action ought to apply to have the proceedings in the latter action transferred to the judge in whose court the proceedings under the decree are pending, and to have the second action stayed by him (*z*); otherwise the costs of it may be dealt with as costs in their action (*a*).

Question on applications to stay.

On the application to stay the proceedings, the question is, whether the action which is sought to be stayed asks something more than could be obtained under the existing order (*aa*). *As, for instance, where more complete and beneficial relief is sought or can be obtained in the second suit (*b*), or further questions raised, such as willful default or breaches of trust (*c*). Even where the second suit goes further than the first, proceedings in the second action have been stayed on the executor or administrator undertaking not to object to any additions to the decree in the first action which the judge may think fit to add in chambers (*d*).

(*y*) Woodgate *v.* Field, 2 Hare, 211, 214. As to staying proceedings in the other suits, see Hawkes *v.* Barrett, 5 Madd. 17. Turner *v.* Dorgan, 12 Sim. 504. Reid *v.* Territt, 1 Coll. 1. Dryden *v.* Foster, 6 Beav. 146. Frowd *v.* Baker, 4 Beav. 76. Portarlington *v.* Damer, 2 Phill. Ch. C. 262. Duffort *v.* Arrowsmith, 7 De G. M. & G. 434. Harris *v.* Gandy, 1 De G. F. & J. 13.

(*z*) As to applications to stay where one of the actions is in the Palatine Court, see Re Williams, W. N. 1882, p. 6. Townsend *v.* Townsend, 23 Ch. D. 100. Wynne *v.* Hughes, 26 Beav. 377. Re Longdendale Cotton Co., 8 Ch. D. 150.

(*a*) Therry *v.* Henderson, 1 Y. & C. Ch. C. 481.

(*aa*) Rigby *v.* Strangways, 2 Phill. Ch. C. 175. Rump *v.* Greenhill, 20 Beav. 512. Plunkett *v.* Lewis, 11 Sim. 379. See also Suisse *v.* Lowther, 2 Hare, 424. Gwyer *v.* Peterson, 26 Beav. 83. Hoskins *v.* Campbell, 2 Hemm. & Miller, 42. Belcher *v.* Belcher, 2 Dr. & Sm. 444.

(*b*) Re McRae, 25 Ch. D. 16. Bulgen *v.* Sage, 3 M. & Cr. 683. Taylor *v.* Southgate, 4 M. & Cr. 203. Underwood *v.* Jee, 1 Mac. & G. 276. Pickford *v.* Hunter, 5 Sim. 122.

(*c*) Zambaco *v.* Cassavelli, L. R. 11 Eq. 439.

(*d*) Gwyer *v.* Peterson, 26 Beav. 83. Matthews *v.* Palmer, 11 W. R. 610. Van Bunan *v.* Piffard, 13 W. R. 425.

The ordinary practice is to allow the action in which a decree has first been obtained to proceed and to stay the other action (*e*).

General practice.

If the decree has been "snapped," or unfairly obtained (*f*), or the action in which it was obtained improperly instituted (*g*), the court will either not stay the other action or will give the conduct of the action in which the decree has been made, to the plaintiff in the other action (*h*).

Where the decree has been wrongly obtained.

Where the first action is stayed because a decree has been made in a later action, the conduct of the second action will usually be given to the plaintiff in the first action (*i*); it makes no difference in this respect, that one of the actions is in the Palatine Court (*k*). The court will, of course, depart from this rule, on the ground of the special circumstances of the case; for instance, where the court comes to the conclusion that the object of the plaintiff in the first action is not the *bona fide* administration of the estate (*l*).

Conduct of the proceedings.

*In some cases the first action will be partially stayed, and liberty given to the plaintiff in the first action to prove in the second action for what he may eventually establish in the first (*m*).

Partial stay.

Where an order has been made by any judge of the Chancery Division, for the administration of the assets of any testator or intestate, the judge in whose court such administration is pending has power, without any further consent, to transfer to himself any cause or matter pending in any other court or division, brought or continued by or against the executors or administrators of the testator or intestate (*n*). In dealing with a creditor's action, when transferred to him, he will be governed by the same principles as formerly governed the court in staying proceedings in such actions.

Transfer of actions against executors or administrators where an administration order has been made.

The application for transfer of an action brought or continued

(*e*) Seton, 5th edit. 705.

(*f*) Harris *v.* Gandy, 1 D. F. & J. 13.

(*g*) Frost *v.* Ward, 2 D. J. & S. 70.

(*h*) Rhodes *v.* Barret, L. R. 12 Eq. 479.

(*i*) Zambaco *v.* Cassavelli, L. R. 11 Eq. 439. Kenyon *v.* Kenyon, 35 Beav. 300. Belcher *v.* Belcher, 2 Dr. & Sm. 444. Frost *v.* Frost, 2 D. J. & S. 70.

(*k*) Re Swire, 21 Ch. D. 647. Townsend *v.* Townsend, 23 Ch. D. 100.

(*l*) Re Swire, *supra*.

(*m*) Dryden *v.* Foster, 6 Beav. 146. Re Smith's Estate, 33 L. T. N. S. 804. Crowe *v.* Russell, 4 C. P. D. 186.

(*n*) R. S. C. 1883, Ord. XLIX. r. 5. For transfer in other cases, see Ord XLIX.

against an executor or administrator, after an administration order, can be made *ex parte* by any party to either action (*o*). It must be made to the judge who made the administration order (*p*).

The application, how made.

This power of transfer takes the place of the old practice, which was, after a decree for administration had been made, for the judge of the Court of Chancery making the administration decree, to restrain proceedings against the executor or administrator by creditors by granting injunctions against such other creditors.

The action to be transferred must be one brought against the executor *qua* executor, and not one for which the executor is personally liable (*q*).

The old practice was that a plaintiff at law was entitled, unless his claim proved unfounded (*r*), upon the injunction *being granted, to his costs of the action up to the time when he had notice of the decree (*s*). And if the creditor commenced his action at law before bill filed, and then discontinued it, and came in under the decree, he would be entitled to prove his costs at law, in addition to his debt (*t*). He was also entitled to the costs of the motion to restrain him from suing at law (*u*). But he was not allowed the costs of further proceedings at law after actual notice of the decree (*x*), nor in such case his costs of the motion to restrain his proceedings (*y*). If, however, the executor

Right of creditor bringing second action to costs.

(*o*) Ann. Pr. 1893, p. 834.

(*p*) R. S. C. 1883, Ord. XLIX. r. 5.

(*q*) Chapman *v.* Mason, 40 L. T. N. S. 678. See also Re Timms, 26 W. R. 692.

(*r*) King *v.* King, 34 Beav. 10.

(*s*) Dyer *v.* Kearsley, 2 Meriv. 483, note to Terrewest *v.* Featherby. Paxton *v.* Douglas, 8 Ves. 520. Ratcliffe *v.* Winch, 16 Beav. 576. In Drewry *v.* Thacker, 3 Swanst. 541, Lord Eldon said that the usual form in which the order for the injunction was drawn (*i.e.*, "on payment of costs") was improper; inasmuch as the parties entitled to the injunction, if they were required to pay costs as a preliminary, might, from the situation of the assets, be unable to obtain it in time.

(*t*) Goate *v.* Fryer, 3 Bro. Chanc. Cas. 23.

(*u*) Jones *v.* Jones, 5 Sim. 678. But see Anon. 2 Sim. & Stu. 424.

(*x*) Paxton *v.* Douglas, 8 Ves. 521. Curre *v.* Bowyer, 3 Madd. 456. Jones *v.* Brain, 2 Y. & Coll. Ch. C. 170.

(*y*) Curre *v.* Bowyer, 3 Madd. 456. Jones *v.* Brain, 2 Y. & Coll. Ch. C. 170. See Hayward *v.* Constable, 2 Younge & Coll. 43. Moore *v.* Prior, *ibid.* 375. He may be ordered to pay these costs, if, after bringing in his claim under the decree, he proceeds with his own suit: Beauchamp *v.* Lord Huntley, Jacob, 546. Gardner *v.* Garrett, 20 Beav. 469: notwithstanding the suit be in a foreign court: Graham *v.* Maxwell, 1 Mac. & G. 71. He may set off such costs against his costs incurred before notice of the decree: 20 Beav. 469.

[*1911]

took any steps in the action after the plaintiff at law had notice of the decree, the latter would be allowed all his costs at law and also those of the motion for the injunction (*z*). The practice is now substantially the same as before the Judicature Acts (*a*).

With respect to the time within which the injunction should be applied for, it was observed by Lord Lyndhurst (*b*), that any delay in the application before judgment *would, in most cases, properly resolve itself into a mere question of costs.

Time for application.

By sect. 125, sub-s. 4, of the Bankruptcy Act, 1883, where proceedings have been commenced in any court for the administration of the estate of a deceased debtor, such court can, on proof that the estate is insolvent, transfer the proceedings to the Court of Bankruptcy.

Transfer to bankruptcy.

The transfer can be made either on the application of a creditor (*c*), or without any such application (*d*).

A creditor before applying for the transfer of an insolvent estate into bankruptcy must have proved his debt (*e*).

The transfer can be ordered after a judgment for administration has been made (*f*).

The exercise of this power of transfer is discretionary (*g*), and the mere fact that the executor has a right of retainer and a liberty not to plead the Statute of Limitations to a debt, which rights would be recognized in the Chancery Division, but might be taken away by a transfer to the Court of Bankruptcy, is not a ground for the transfer (*h*).

Transfer discretionary.

An estate cannot be administered in a Court of Equity in the absence of a personal representative (*i*).† And, consequently, if it appear that the court cannot give the plaintiff the relief which he asks without an administration of the estate, there must be a personal repre-

An order for administration cannot be made in the absence of a personal representative of the deceased.

(*z*) Turner *v.* Connor, 15 Sim. 630.

(*a*) See R. S. C. Ord. XLIX. r. 5. Morgan & Wurtzburg on Costs, 2nd edit. p. 192. Dan. Ch. Pr. 6th edit. p. 1947.

(*b*) Rouse *v.* Jones, 1 Phill. Ch. C. 464.

(*c*) 46 & 47 Vict. c. 52, s. 125, sub-s. 4.

(*d*) 53 & 54 Vict. c. 71, s. 21, sub-s. 2 (Bankruptcy Act, 1890).

(*e*) Re Weaver, 29 Ch. D. 236.

(*f*) Re York, 36 Ch. D. 233. Senhouse *v.* Mawson, 52 L. T. N. S. 745. Re Briggs, 7 Times Rep. 572.

(*g*) Re Baker, 44 Ch. D. 262. Re Weaver, 29 Ch. D. 236.

(*h*) Re Baker, *supra.* But see Re York, 36 Ch. D. 233.

(*i*) Lowry *v.* Fulton, 9 Sim. 104. Dowdeswell *v.* Dowdeswell, 9 Ch. D. 294.

† See American note at end of this chapter.

sentative of it before the court (*k*). Accordingly, on a demurrer to a bill seeking payment of a legacy out of assets come to the hands of the *defendant, who was the husband of the sole executrix deceased, it was held by Lord Cottenham, C., that an allegation that all the testator's debts and the other legacies bequeathed by his will had been paid, and that there were assets *ultra* in the hands of the defendant to satisfy the plaintiff's demand, was not sufficient to dispense with the presence of a personal representative of the testator, the allegation being one which, even if admitted by the defendant, the court would not take his word for (*l*).

In Glass *v.* Oxenham (*m*), it was held that if a bill were brought against an executor, during whose infancy the will appointed an executor *durante minore ætate*, the latter must be made a party, unless the former had received all the testator's personal estate from the hands of the temporary executor, upon an account between them.

Where the executor of a deceased personal representative is a necessary party.

It seems to be established, that in an action for a general account of the assets of a deceased person, the personal representative of his former representative is properly joined as a co-defendant with his continuing or present personal representative. In Holland *v.* Prior (*n*), it was held, by Lord Brougham, overruling the decision of Sir L. Shadwell, V.-C., that the executor of an administratrix, who had received assets of her intestate, might and ought to be made a defendant in a suit instituted by a creditor of the intestate. And in Hall *v.* Austin (*o*), Knight-Bruce, V.-C., appears to have acceded to the proposition that, as a general rule, where there are several executors who have acted and one of them dies before any suit is instituted, a person interested in the administration of the estate cannot file a bill for the general administration of the estate, making the surviving executors alone parties.

It is necessary to join the representative of a deceased exe*cutor

(*k*) Penny *v.* Watts, 2 Phill. Ch. C. 153. Cary *v.* Hills, L. R. 15 Eq. 79. Rowsell *v.* Morris, L. R. 17 Eq. 20. But see *contra*, Rayner *v.* Koehler, L. R. 14 Eq. 262. Coote *v.* Whittington, L. R. 16 Eq. 536. Re Lovett, 3 C. D. 198.

(*l*) Penny *v.* Watts, 2 Phill. Ch. C. 149.

(*m*) 2 Atk. 121.

(*n*) 1 Mylne & K. 237. See also Hall *v.* Austin, 2 Coll. 570.

(*o*) 2 Coll. 570. See also Coppard *v.* Allen, 2 D. J. & S. 173. But see Masters *v.* Barnes, 2 Y. & C. Ch. C. 616.

[*1913] [*1914]

if a general account of the trust estate, on the footing of willful neglect and default, is required (*p*).

The representative of a deceased executor must be joined where willful default alleged.

The representative of a deceased executor need not be joined in an administration action, if it is not sought to charge the estate of the deceased executor (*q*), or if an account is waived as against his estate (*r*). The old form of pleading, where the representatives of a deceased executor were not joined, was to allege that the deceased executor, or his representative, had duly accounted to the surviving executors (*s*); but such an allegation appears to have been unnecessary (*t*), and under the present procedure, as the bulk of administrations are without pleadings, there would be no opportunity of making such an allegation.

Administrator of deceased executor and executor *de son tort* not sufficient.

The administrator of a deceased executor does not sufficiently represent the estate of which his intestate was executor for the purpose of making an administration decree (*u*), and the better opinion seems to be that an executor *de son tort* alone is not sufficient (*x*).

Where fund converted or specially appropriated.

If, indeed, an executor or administrator has so dealt with a fund, that by reason of such dealing it has ceased to bear the character of a legacy or share of residue, and has assumed the character of a trust-fund, in a sense different from that in which the executor or administrator held it,—if it has been taken out of the estate of the testator, and appropriated to, or made the property of, the *cestui que trust*,—it may not be necessary that the *cestui que trust* should bring before the court the personal representative of the testator in a suit to recover that part of the estate (*y*).

Foreign executor, &c.

*There has already been occasion to point out that in cases where the executor or administrator is required to be made a party, it is not sufficient that he is such by the appoint-

(*p*) Coppard *v.* Allen, 2 D. J. & S. 173.

(*q*) For form of such a decree, see Seton, 4th edit. p. 881.

(*r*) Masters *v.* Barnes, 2 Y. & C. Ch. C. 616.

(*s*) Adams *v.* Barry, 2 Y. & C. Ch. C. 167.

(*t*) Wilson *v.* Todd, 1 My. & Cr. 42.

(*u*) Barber *v.* Walker, 15 W. R. 728.

(*x*) Rowsell *v.* Morris, L. R. 17 Eq. 20. But see *contra*, Re Lovett, 3 Ch. D. 198. Rayner *v.* Koehler, L. R. 14 Eq. 262. Coote *v.* Whittington, L. R. 16 Eq. 534. Blewitt *v.* Blewitt, Yo. 541.

(*y*) Bond *v.* Graham, 1 Hare, 482, 484. See also Arthur *v.* Hughes, 4 Beav. 506, and Lord Cottenham's judgment in Penny *v.* Watts, 2 Phill. Ch. C. 153, 154. But see Rayner *v.* Koehler, L. R. 14 Eq. 262. Coote *v.* Whittington, L. R. 16 Eq. 534.

[*1915]

ment and authority of a foreign government; but he must obtain his right to represent the estate from the Probate Court in this country (*z*).

Administrator *ad litem* not sufficient.

Where there is no general personal representative, but a special representative limited to the subject of the suit has been appointed by the Probate Court, the limited administrator does not sufficiently represent the estate of the deceased where a general administration is required (*a*).

Until decree the plaintiff is *dominus litis*.

After the usual administration judgment or order, every creditor has an interest in the suit (*b*), and is in a sense, deemed to be before the court; yet, until such order, the plaintiff is *dominus litis*, so that he may deal with the action as he pleases; and he may settle the matter with the execu*tor, by the latter paying the debt and costs of the action, and compromise' the action and relinquish proceedings (*c*). And indeed the court will compel the creditor to accept payment of his debt, when the executor offers to pay it with the costs of the action (*d*).

Who may be made co-defendants with executors, &c.

The general rule is, that, inasmuch as the executor or administrator is the trustee and proper representative of all persons interested in the personal estate, and has the duty cast on him of protecting it against improper demands,

(*z*) *Ante*, p.*296 *et seq.* In Anderson *v.* Caunter, 2 M. & K. 763, A., one of the executors of the will of B., who died in India, proved the will, and possessed the testator's assets in India: The widow and executrix of A. proved her husband's will, and possessed his assets in India, and having afterward come to England, she was made a party to a suit for the administration of B.'s estate: And Sir J. Leach, M.R., held, that it was not necessary that an administrator of A.'s estate in England should be also a party to this suit. But see the observations of Lord Cottenham on this decision in Tyler *v.* Bell, 2 Mylne & Cr. 89, 110. See also Story's Confl. of Laws, ch. xiii. s. 513, note (1), where it is said that Anderson *v.* Caunter seems not a sound authority. Maclean *v.* Dawson, 27 Beav. 21. Flood *v.* Patterson, 29 Beav. 295.

[*1916]

(*a*) See *ante*, p.*448, note (*g*). Dowdeswell *v.* Dowdeswell, 9 Ch. D. 294.

(*b*) See Sterndale *v.* Hankinson, 1 Sim. 399, 400. Cook *v.* Bolton, 5 Russ. 282. Brown *v.* Lake, 2 Coll. 620. Smith *v.* Guy, 2 Phill. Ch. C. 159. But see Re Greaves, 18 Ch. D. 551. It would appear that under the old practice only creditors whose debts were due at the death of the testator were in strictness permitted to come in under the decree; the present practice is to admit all creditors to come in whose debts have become due before the date of the report: Thomas *v.* Griffith, 2 De G. F. & J. 555, *per* Turner, L.J.

(*c*) Woodgate *v.* Field, 2 Hare, 213. Wood *v.* Westall, 1 Younge, 305.

(*d*) Woodgate *v.* Field, 2 Hare, 213. Pemberton *v.* Topham, 1 Beav. 316. Holden *v.* Kynaston, 2 Beav. 204.

it is not necessary or proper to join either a pecuniary or a residuary legatee, or the next of kin, as a party to an action against the executor or administrator for an account of the personal estate, however interested such persons may be to contest the demand which has occasioned the suit (*e*). Special circumstances, however, have been permitted to justify the relaxation of this rule (*f*).

Persons wrongfully taking the dead man's property.

Again, the established rule is, that in ordinary cases, persons who have possessed themselves of the property of the deceased, or debtors to the estate generally, cannot be made parties to an action against the executor: For regularly there can be no action against the debtor but by the executor, who has the right both in law and in equity: If the executor be solvent he may even release a debtor, and neither a creditor nor a residuary legatee can bring any action against that debtor: There must be collusion or insolvency, or some special case: The court will interfere, if there is such special case: as collusion or insolvency; and then the action may be brought against both the debtor and the executor (*g*). And the general principle on which a debtor *to the estate cannot be made a defendant to an action by a creditor or residuary legatee against the executor, unless collusion, insolvency, or some special case be shown, has been held to apply equally to the case of a creditor overpaid by the executor: that is, if there is no collusion or special case, if the executor is not insolvent, he stands the middle man, responsible for the property misapplied by paying a man as a creditor who was not a creditor, as in the other case for the property outstanding in a debtor (*h*).

But this rule has been relaxed in the case of surviving partners of the deceased: whom it is allowable to make parties with the executor:

(*e*) Brown *v.* Dowthwaite, 1 Madd. 446.

(*f*) Lord Hertford *v.* Zichi, 9 Beav. 11.

(*g*) Newland *v.* Champion, 1 Ves. Sen. 105. Utterson *v.* Mair, 2 Ves. 95. Doran *v.* Simpson, 4 Ves. 651. Troughton *v.* Binkes, 6 Ves. 573. Alsager *v.* Rowley, 6 Ves. 748. Beckley *v.* Dorrington, cited by Lord Eldon, *ibid.* 749. Benfield *v.* Solomons, 9 Ves. 86. Burroughs *v.* Elton, 11 Ves. 29. Consett *v.* Bell, 1 Y. & Coll. Ch. C. 569. Lancaster *v.* Evors, 4 Beav. 158. Baddeley *v.* Curwen, 2 Coll. 151. Barker *v.* Birch, 1 De Gex & Sm. 376. As to whether a refusal by the executor to sue the debtor is sufficient, see the case last cited. The special circumstances which will authorize making the debtor a party are not confined to collusion or insolvency: Meldrum *v.* Scorer, 56 L. T. 471. Consett *v.* Bell, 1 Y. & Coll. Ch. C. 569. 1 De Gex & Sm. 376. Stainton *v.* Carron Company, 11 Beav. 146. Saunders *v.* Druce, 3 Drewr. 140.

(*h*) Alsager *v.* Rowley, 6 Ves. 748.

in order, it is said, that the plaintiff may have an account of the personal estate entire (*i*).† Accordingly, in Bowsher *v.* Watkins (*k*), it was held by Sir John Leach, M.R., that residuary legatees might maintain a bill for an account against the executor and the surviving partner of the testator, although collusion between the executor and the surviving partner was neither charged nor proved (*l*). But upon the examination of the autho*rities (*m*), it will be found that there is no instance of such a suit being maintained in the absence of special circumstances, and that collusion is clearly not the only ground on which such a bill can be supported. The cases seem to go to this extent,—that such an action may be supported in all cases where the relation between the executors and the surviving partners is such as to present a substantial impediment to the prosecution of the rights of the parties interested in the estate against the surviving partners (*n*).

Surviving partners of deceased.

The mere refusal of a legal personal representative to sue for the recovery of outstanding assets, is not, in the absence of special circumstances, sufficient to justify a residuary legatee or next of kin, in suing the legal personal representative and the alleged debtor to the estate (*o*).

Refusal of personal representative to sue.

Where an executor has administered assets and paid over the residue of an estate, a creditor of the testator is entitled

Following assets.

(*i*) Newland *v.* Champion, 1 Ves. Sen. 106, by Lord Hardwicke.

† See American note at end of this chapter.

(*k*) 1 Russ. & M. 277.

(*l*) His Honor, in the previous case of Gedge *v.* Traill, 1 Russ. & M. 281, note, overruled a demurrer to a creditor's bill, which had made the co-partners of the deceased testator co-defendants with his executor, upon the ground that the retaining of assets by a stranger with consent of the executor, amounted to collusion. In Davies *v.* Davies, 2 Keen, 534, Lord Langdale, M.R., said, that the decision of Bowsher *v.* Watkins is far from establishing the general proposition, that in every case a bill may be filed against an executor and a surviving partner of the testator, without charging and proving fraud or collusion. See also Law *v.* Law, 2 Coll. 41. Cropper *v.* Knapman, 2 Younge & Coll. 338.

(*m*) Bowsher *v.* Watkins, 1 Russ. & M. 277. Gedge *v.* Traill, 1 Russ. & M. 281. Davies *v.* Davies, 2 Keen, 534. Law *v.* Law, 2 Coll. 41. Cropper *v.* Knapman, 2 Younge & Coll. 338. Commented on in Yeatman *v.* Yeatman, 7 C. D. 210. Beningfield *v.* Baxter, 12 App. Cas. 167.

(*n*) Travis *v.* Milne, 9 Hare, 141, 150, by Turner, V.-C. In Stainton *v.* Carron Company, 18 Beav. 146, Romilly, M.R., approved of this statement of the general principle, and held, that it did not apply to such a partnership as a Joint Stock Company. See also Yeatman *v.* Yeatman, 7 C. D. 210.

(*o*) Yeatman *v.* Yeatman, 7 C. D. 210.

to follow the residue and to compel payment from the residuary legatee of his debt, so far as the residue will extend, and the executor need not be a defendant to the action (*p*).

Death of one of several co-plaintiffs in a creditor's action.

The death of one of several co-plaintiffs in a creditor's suit did not under the old practice cause the suit to abate (*q*), but his personal representatives could obtain an order of revivor if the dead creditor represented a different class of creditors to his co-plaintiff, at any rate if the dead plaintiff died after *decree (*r*). So now under the Judicature Act the action will not abate by reason of Ord. XVII. r. 1, and any necessary parties may be added under r. 4 of the same order.

Binding absent persons.

Although it has been the practice of the court in administration actions to entertain actions by creditors, legatees, and parties entitled in distribution on behalf of themselves and all others, and to exonerate the executor or administrator for payment of assets pursuant to its order, yet such a decree is not absolutely binding upon the absent creditors, legatees, or distributees, who have had no opportunity of proving and presenting their claims (*s*), and have been guilty of no laches (*t*). Although such creditors have no remedy against the executor or administrator, yet they have a right to assert their claim against the creditors, legatees, or distributees who have received it (*u*).

When the interests of persons not parties to the action are bound by it.

It is important to understand how the interests of persons affected by an account or inquiry decided in an administration action may be bound when they are not actually parties to the action.

There seem to be four ways in which such interests will be bound:—

1. The court can under Ord. XVI. r. 40, direct that such persons shall be served with notice of the judgment or order.

After such notice the persons served are bound by the proceedings, in the same manner as if they had originally been parties, and are at liberty to attend the proceedings (*x*) upon entering an appearance in

(*p*) Hunter *v.* Young, 4 Ex. D. 256. See also Clegg *v.* Rowland, L. R. 3 Eq. 368.

(*q*) Body *v.* Kent, 1 Mer. 364. Burney *v.* Morgan, 1 Sim. & Stu. 358.

(*r*) Burney *v.* Morgan, *supra.*

(*s*) David *v.* Frowd, 1 Mlyne & K. 200. See Anon. 9 Price, 210.

(*t*) Sawyer *v.* Birchmore, 1 Keen, 391. S. C. 2 M. & Cr. 611. See also Cattell *v.* Simons, 8 Beav. 143.

(*u*) Story on Equity Plead. Ch. iv. s. 106. An executor suing on behalf of himself and all other creditors can none the less retain his own debt: *Ex parte* Campbell, 16 Ch. D. 198.

(*x*) Ord. XVI. r. 40.

the Central Office in the same manner as a defendant entering an appearance (*y*). Any person so served may, within one month after such service, *apply to the court or a judge to discharge, vary, or add to the judgment or order (*z*).

Numerous persons having the same interest.

2. "Where there are numerous parties having the same interest in one clause or matter, one or more of such persons may sue or be sued, or may be authorized by the Court or a Judge to defend in such cause or matter, on behalf or for the benefit of all persons so interested" (*a*). If an order made in such an action is intended to bind absent parties the court will make a "representation order" in the form "it appearing that the residuary legatees (or whatever the class may be) are numerous, and that A. is one of such class, order that A. do defend in the cause (or matter) on behalf or for the benefit of all persons so interested" (*b*).

Claim for a representation order:

Where a representation order is required the writ must be indorsed in accordance with Ord. III. r. 4, and show that the plaintiff sues or the defendant is sued in a representative capacity (*c*).

"If either party wishes to deny the right of any other party to claim as executor, or as trustee, whether in bankruptcy or otherwise, or in any representative or other alleged capacity . . . he shall deny the same specifically" (*d*).

representative of a class.

3. "In any case in which the right of an heir-at-law or the next of kin or a class shall depend upon the construction which the Court or a Judge may put upon an instrument, and it shall not be known or shall be difficult to ascertain who is or are such heir-at-law or next of kin or class, and the Court or Judge shall consider that in order to save expense, or for some other reason, it will be convenient to have the questions of construction determined before such heir-at-law, next of *kin or class, shall have been ascertained by means of inquiry, or otherwise, the Court or a Judge may appoint some one or more persons to represent such heir-at-law, next

(*y*) Ord. XVI. r. 41.

(*z*) Ord. XVI. r. 40.

(*a*) R. S. C. Ord. XVI. r. 9.

(*b*) See judgment of Kay, J., in May v. Newton, 34 Ch. D. 345, 348, where the whole subject is very fully discussed.

(*c*) "If the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, the indorsement shall show . . . in what capacity the plaintiff or defendant sues or is sued": R. S. C. Ord. III. r. 4. See forms in Appendix A. Part III. Sect. VII. to R. S. C.

(*d*) R. S. C. Ord. XXI. r. 5.

[*1920] [*1921]

of kin or class, and the judgment of the Court or Judge in the presence of such persons shall be binding upon the heir-at-law, next of kin or class, so represented (*e*).

4. "Trustees, executors, and administrators, may sue and be sued on behalf of, or as representing the property or estate of which they are trustees or representatives, without joining any of the persons beneficially interested in the trust or estate, and shall be considered as representing such persons; but the Court or a Judge may, at any stage of the proceedings, order any of such persons to be made parties, either in addition to or in lieu of the previously existing parties" (*f*).

Trustees, executors, &c., may sue and be sued as representing estate.

It is obvious, however, that where the trustees, executors, or administrators, are the accounting parties, and the question is one of accounts, they do not sufficiently represent the estate to bind absent parties (*g*).

In the case of Re Davies (*h*), Kekewich, J., held that he had power to give costs, as between solicitor and client, to persons not actually parties to the proceedings, but only there by virtue of a representation order under Ord. XVI. r. 32.

Costs of persons appearing under a representation order.

A residuary legatee;

A next of kin;

A legatee interested in a legacy charged upon real estate;

A person interested in the proceeds of real estate directed to be sold;

A residuary devisee, or heir;

if entitled to an order for administration of the estate of a deceased, can obtain such order against the executor or administrator without serving the other persons interested (*i*), subject to the right of the court to require any other to be *made a party (*k*); but it appears an order made in such case will not be binding on other beneficiaries unless they are served with it under Ord. XVI. r. 40, or a representation order is made under Ord. XVI. rr. 9 or 32 (2) (*l*).

Although suits in equity are not within the words of the Statute of Limitations, 21 Jac. I. c. 16, yet they are within the spirit and meaning of it; and, therefore, upon all *legal* demands, the Courts of Equity are *bound* to yield obedience to its

Defense: Statute of Limitations.

(*e*) R. S. C. Ord. XVI. r. 32.

(*f*) R. S. C. Ord. XVI. r. 8.

(*g*) See Kay, J., in May *v.* Newton, 34 Ch. D. 349.

(*h*) W. N. 1891, p. 104.

(*i*) Ord. XVI. rr. 33–35.

(*k*) Ord. XVI. r. 39.

(*l*) See May *v.* Newton, *supra.*

provisions (*m*); and as Courts of Equity will not entertain stale demands, they have thought proper to adopt the limit of six years by analogy to that statute (*n*).†

Effect of a trust for creditors or beneficiaries.

Subject to the provisions of the Trustee Act, 1888, the Statute of Limitations (21 Jac. I. c. 16) does not run against a trust (*o*). Accordingly, a trust created by will upon the *real* estate for the payment of debts, prevents the statute *from running against such debts as were not barred in the testator's lifetime (*p*), but a mere charge is not sufficient for this purpose (*q*), though such a trust does not revive a debt on which the statute had taken effect before the will came into operation, *viz.*, before the testator's death (*r*). But a trust or charge by will upon the *personal* estate does not prevent the operation of the statute: For the law vests the personal estate of the deceased in his executors or administrators, as a fund for the payment of his debts, and he cannot, by his will, create a special trust for that purpose: Consequently, such

(*m*) Hovenden *v.* Annesley, 2 Scho. & Lef. 630, 631. Foley *v.* Hill, 1 Phill. Ch. C. 399. Burdick *v.* Garrick, L. R. 5 Ch. 234, 240. Re Greaves, 18 Ch. D. 551, 554. Re Sharpe, [1892] 1 Ch. 154. Re Bennett, *ibid.*

(*n*) Re Greaves, *supra.* In Tatam *v.* Williams, 3 Hare, 347, a bill by surviving partners against the executors of a partner, who died thirteen years before the institution of the suit, for an account of his partnership dealings and transactions, charging that the deceased partner was indebted to the firm at the time of his death, was dismissed by Wigram, V.-C., with costs, on the ground of lapse of time. Again, in Baker *v.* Read, 18 Beav. 398, where a bill had been filed after seventeen years to set aside a purchase of the testator's estate by his executor at an undervalue, Romilly, M.R., refused relief, although his Honor added that if the transaction had been fresh, he should have set it aside without a moment's hesitation. See further as to *laches* and lapse of time being a bar in equity, Portlock *v.* Gardner, 1 Hare, 594. Browne *v.* Cross, 14 Beav. 105. Sibbering *v.* Balcarras, 3 De G. & Sm. 735. Wright *v.* Vanderplank, 2 Kay & J. 1. Aspland *v.* Watto, 20 Beav. 474. Mills *v.* Drewitt, 20 Beav. 632. Hartwell *v.* Colvin, 16 Beav. 140. Bullock *v.* Downes, 9 H. L. C. 1.

† See American note at end of this chapter.

(*o*) Hollis's case, 2 Ventr. 345. Hargreaves *v.* Michell, 6 Madd. 326. Barker *v.* Martin, 5 Sim. 380. Wedderburn *v.* Wedderburn, 2 Keen, 722. Dickenson *v.* Lord Holland, 2 Beav. 310. Obee *v.* Bishop, 1 De Gex, F. & J. 137. Brittlebank *v.* Goodwin, L. R. 5 Eq. 545. Woodhouse *v.* Woodhouse, L. R. 8 Eq. 514.

(*p*) Burke *v.* Jones, 2 V. & B. 275. Hughes *v.* Wynne, 1 Turn. & R. 307. Hargreaves *v.* Michell, 6 Madd. 326.

(*q*) Dickinson *v.* Teasdale, 1 D. J. & S. 52. Jacquet *v.* Jacquet, 27 Beav. 332. Cunningham *v.* Foot, 3 App. Cas. 974.

(*r*) Burke *v.* Jones, 2 V. & B. 275. Hargreaves *v.* Michell, 6 Madd. 326. O'Connor *v.* Haslam, 5 H. L. C. 170.

[*1923]

a trust has no legal operation (*s*). Where a testator directed his debts to be paid out of his real and personal estate, and he afterward provided that if his personal estate should fall short in paying his debts, then he empowered his executors to enter into the receipts of the rents of his freehold, until the same should be wholly paid off; it was held that, notwithstanding the personal estate was sufficient for payment of the debts, a trust had been created for payment of the debts out of his realty, so as to prevent the operation of the statute; and that the real estate remained liable to pay a simple contract debt which had been left unpaid after distribution of the residuary personal estate (*t*).

Real Property Limitation Act, 1874.

*By the Real Property Limitation Act, 1874 (*u*), s. 8, it is enacted, that after the 1st January, 1879, "no action or suit, or *other proceeding* shall be brought to recover any sum of money secured by any mortgage, judgment (*x*), or lien, or otherwise charged upon or payable out of any land or rent at law or in equity, *or any legacy* (*y*), but within twelve years next after a

(*s*) Scott *v.* Jones, 4 Cl. & F. 382, in which case the House of Lords affirmed the judgment of Sir John Leach, and reversed that of Lord Brougham, 1 Russ. & M. 255. See also *Accord.* Freake *v.* Cranefeldt, 3 M. & Cr. 499. Evans *v.* Tweedy, 1 Beav. 55.

(*t*) Crallan *v.* Oulton, 3 Beav. 1. Moore *v.* Petchell, 22 Beav. 172. Where executors in whom the legal estate is vested are selling real estate charged with debts, a purchaser is not bound or entitled to inquire whether debts remain unpaid, unless twenty years have elapsed from the testator's decease, but after twenty years he should make such inquiry: Re Tanqueray-Willaume and Landau, 20 Ch. D. 465. For the rule as to leaseholds, see Re Whistler, 25 Ch. D. 561.

(*u*) 37 & 38 Vict. c. 57.

(*x*) See Watson *v.* Birch, 15 Sim. 523. This section applies to judgments generally, and is not restricted to judgments which operate as charges on land. Hebblethwaite *v.* Peever, [1892] 1 Q. B. 124. Jay *v.* Johnstone, [1893] 1 Q. B. 25, affirmed in C. A. [1893] 1 Q. B. 189.

(*y*) Section 40 of the statute 3 & 4 Will. IV. c. 27, which corresponded to the above provision, was held to apply to legacies payable out of personal estate as well as to legacies charged on real estate: Sheppard *v.* Duke, 9 Sim. 567. Bullock *v.* Downes, 9 H. L. C. 1, 14. A residue bequeathed by will is clearly within the statute: Prior *v.* Horniblow, 2 Younge & Coll. 200. Christian *v.* Devereux, 12 Sim. 264. Portlock *v.* Gardner, 1 Hare, 594, 604. Adams *v.* Barry, 2 Coll. 285, 290, 293. But where more than twenty years after the death of the testator, the representative of one of his executors, and the residuary legatee under his will, filed a bill against the representative of the co-executor to recover residuary assets of the testator, alleged to have been possessed by the co-executor; it was held that the plaintiffs, though barred by the statute as to assets possessed by the executor more than twenty years before the filing of the bill, were not so

[*1924]

present right to receive the same shall have accrued to some person capable of giving a discharge for or release of the same, unless in the meantime some part of the principal money, or some interest thereon, shall have been paid, or some acknowledgment (*z*) of the right thereto *shall have been given in writing signed by the person by whom the same shall be payable, or his agent, to the person entitled thereto or his agent; and in such case no such action or suit or proceeding shall be brought but within twelve years after such payment or acknowledgment, or the last of such payments or acknowledgments if more than one was given" (*a*).

Money or legacy charged upon land or rent.

By sect. 10: "After the commencement of this Act no action, suit, or other proceeding, shall be brought to recover any sum of money or legacy charged upon, or payable out of any land or rent, at law or in equity, and secured by an express trust, or to recover any arrears of rent or of interest in respect of any sum of money or legacy so charged or payable, and so secured, or any damages in respect of such arrears, except within the time within which the same would be recoverable if there were not any such trust."

36 & 37 Vict. c. 66, s. 25 (2). Claims by *cestui que trust* against trustee.

"No claim of a *cestui que trust* against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any Statute of Limitations" (*b*).

barred as to assets possessed by him since that time: Adams *v.* Barry, 2 Coll. 290. See also Bright *v.* Larcher, 27 Beav. 130. 4 De G. & J. 608, S. C. And see also Re Johnson, 29 Ch. D. 964. Where the right to sue for the legacy as such was barred by the statute, but the executor, who had possessed assets to pay it, died leaving it unpaid, and having charged his estate with his debts, it was held that the legacy could not be claimed under the charge of debts: Piggott *v.* Jefferson, 12 Sim. 26.

A suit to recover a legacy from an executor is within section 8 of the Real Property Limitation Act, 1874, unless the legacy is vested in him on express trusts. A mere constructive trust will not prevent the statute from being a bar. Re Davis, [1891] 3 Ch. 119. See also Re Barker, [1892] 2 Ch. 491.

(*z*) See Holland *v.* Clark, 1 Y. & Coll. Ch. C. 151, as to what is a sufficient acknowledgment. See also Lord St. John *v.* Boughton, 9 Sim. 219.

(*a*) The 40th section of the 3 & 4 Will. IV. c. 27, did not extend to the case of intestacy, but the section was extended to intestacies by sect. 13 of the 23 & 24 Vict. c. 38. By a strange omission, sect. 8 of the 37 & 38 Vict. c. 57, does not extend to intestacies, the result being that legatees are barred by the latter act after twelve years, and persons claiming under an intestacy will still only be barred by the 23 & 24 Vict. c. 38, after twenty years.

(*b*) Judicature Act, 1873, s. 25, sub-s. 2. See Re Davis, [1891] 3 Ch. 119.

[*1925]

Section 10 of the Real Property Limitation Act, 1874, and sect. 25, sub-s. 2 of the Judicature Act, 1873, seem to be inconsistent; but the construction which has been placed upon them is, that the first section applies as between the land charged and the *cestui que trust*, whilst the second one applies as between the trustee and *cestui que trust* (*c*).

Claims on a trust of land or rent.

*"When any land or rent shall be vested in a trustee upon any express trust, the right of the *cestui que trust*, or any person claiming through him, to bring a suit against the trustee, or any person claiming through him, to recover such land or rent, shall be deemed to have first accrued, according to the meaning of the Act, at and not before the time at which such land or rent shall have been conveyed to a purchaser for a valuable consideration, and shall then be deemed to have accrued only as against such purchaser and any person claiming through him" (*d*).

The benefit of this section is extended to personal estate by virtue of sect. 25, sub-s. 2 of the Judicature Act, 1873.

3 & 4 Will. IV. c. 27, s. 42.

By sect. 42 of the stat. 3 & 4 Will. IV. c. 27, "After the 31st December, 1833, no arrears of rent or of interest, in respect of any sum of money charged upon or payable out of any land or rent, *or in respect of any legacy* (*e*), or any damages in respect of such arrears of rent or interest, shall be recovered by any distress, action, or suit, but within six years next after the same respectively shall have become due, or next after an acknowledgment (*f*) of the same in writing shall have been given to the person entitled thereto, or his agent, signed by the person by whom the same was payable, or his agent: Provided nevertheless, that where any prior mortgagee or other incumbrancer shall have been in possession of any land, or in the receipt of the profits thereof, within one year next before an action or suit shall be brought by any person entitled to a subsequent mortgage or other incumbrance on the same land, the person entitled to such subsequent mortgage or incumbrance may recover in such action or suit the arrears of interest which shall have become due during the whole time that such prior mortgagee or incumbrancer was in such possession or receipt as afore-

(*c*) See Fearnside *v.* Flint, 22 Ch. D. 579. Hughes *v.* Coles, 27 Ch. D. 231. Lewin on Trusts, 8th edit. 885.

(*d*) 3 & 4 Will. IV. c. 27, s. 25.

(*e*) An annuity given by a will, forming no charge upon land, but being personal only, is not within this enactment: Roch *v.* Callen, 6 Hare, 531. Re Ashwell's Will, Johns. 112.

(*f*) See note (*z*), *supra*.

said, *although such time may have exceeded the said term of six years (*g*).

Fund severed from the general estate.

In the construction of the last-mentioned statute, it was held, that an action to make an executor account for a sum of money which had been bequeathed to him by his testator upon certain trusts, and which had been severed by the executor from the testator's personal estate, and the interest of which had, for a time, been applied upon the trusts of the will, so that the fund had ceased to bear the character of a legacy, and had assumed that of a trust fund, must be considered not as a suit for a legacy, but as a suit to compel a party to account for a breach of trust; and therefore that it was not within the terms of the act: And in Watson *v.* Saul (*h*), Wood, V.-C., observed, that the distinction between mere charges and express trusts pointed out by Lord Eldon in King *v.* Denison (*i*), was the foundation upon which section 40 of 3 & 4 Will. IV. c. 27 (see now sect. 8 of Real Property Limitation Act, 1874) rested, and that the provisions of that section were never intended to apply to cases of express trusts (*k*). In the case *of Re Blachford (*l*), Pearson, J., allowed legatees, who had waited

(*g*) See Cunningham *v.* Foot, 3 App. Cas. 974.

(*h*) 1 Giff. 188, 196.

(*i*) 1 Ves. & B. 260.

(*k*) Phillipo *v.* Munnings, 2 Mylne & Cr. 309. See also *Accord.* Dinsdale *v.* Dudding, 1 Y. & Coll. Ch. C. 265. Commissioners of Charitable Donations *v.* Wybrants, 2 Jones & L. 182, 196, *per* Sugden, C. of Ireland. Jacquet *v.* Jacquet, 27 Beav. 332. Snow *v.* Booth, 2 K. & J. 132. Burrowes *v.* Gore, 6 H. L. C. 907. Dickinson *v.* Teasdale, 31 Beav. 511. Proud *v.* Proud, 32 Beav. 234. Thomson *v.* Eastwood, 2 App. Cas. 216. See further as to the statute running against trusts, Ravenscroft *v.* Frisby, 1 Coll. 16. Lord St. John *v.* Boughton, 9 Sim. 219. See also Roch *v.* Callen, 6 Hare, 531, 536. Young *v.* Lord Waterpark, 13 Sim. 199, 204. Gough *v.* Bult, 16 Sim. 323. Playfair *v.* Cooper, 17 Beav. 187. Lord Brougham *v.* Lord William Poulett, 19 Beav. 119, 134. Dix *v.* Burford, 19 Beav. 409, 412. See likewise Francis *v.* Grover, 5 Hare, 39. Hughes *v.* Williams, 3 Mac. & G. 683. Hunter *v.* Nockolds, 1 Mac. & G. 640. Cox *v.* Dolman, 2 De Gex, M. & G. 592. Snow *v.* Booth, 2 K. & J. 132. Davenport *v.* Stafford, 14 Beav. 319, 331. Bullock *v.* Downes, 9 H. L. C. 1. Smith *v.* Acton, 26 Beav. 210. Lewis *v.* Duncombe, 29 Beav. 175. Round *v.* Bell, 30 Beav. 121. Tyson *v.* Jackson, 30 Beav. 384. Hodgson *v.* Bibby, 32 Beav. 221. Mason *v.* Broadbent, 33 Beav. 296. Edmunds *v.* Waugh, L. R. 1 Eq. 418. Gyles *v.* Gyles, Cas. temp. Napier, 257. Butler *v.* Carter, L. R. 5 Eq. 276. A trust created by a testator of his real estate for payment of his debts does not remove from a creditor the consequences arising from his negligence or acquiescence, whether expressed or implied: Harcourt *v.* White, 28 Beav. 303, 309.

(*l*) 27 Ch. D. 676.

[*1927] [*1928]

for payment of their legacies until a reversionary interest had fallen in, interest on their legacies from one year after the death of the testatrix, such interest largely exceeding six years' arrears.

Claims against the executor or administrator personally.

In Webster *v.* Webster (*m*), the testator died in 1786, but the will was not proved by the executor till 1802: Nevertheless, on a bill filed by the creditor against the executor in 1803, a plea of the Statute of Limitations was allowed, because the bill alleged that the defendant had possessed himself of the personal estate previously to 1792, and might, therefore, have been sued as an executor *de son tort.*

Sect. 8 of the Trustee Act, 1888.

By sect. 8 (1) of the Trustee Act, 1888 (*n*), "In any action or other proceeding against a trustee or any person claiming through him, except where the claim is founded on any fraud or fraudulent breach of trust to which the trustee was party or privy, or is to recover trust property, or the proceeds thereof still retained by the trustee, or previously received by the trustee and converted to his use, the following provisions shall apply":—

Trustee to have the benefit of any Statute of Limitations.

(a) "All rights and privileges conferred by any Statute of Limitations shall be enjoyed in the like manner and to the like extent as they would have been enjoyed in such action or other proceeding if the trustee or person claiming through him had not been a trustee or person claiming through him" (*o*).

(b) "If the action or other proceeding is brought to recover money or other property, and is one to which no existing Statute of Limitations applies (*oo*), the trustee or person claim*ing through him shall be entitled to the benefit of and be at liberty to plead the lapse of time as a bar to such action or other proceeding in the like manner and to the like extent as if the claim had been against him in an action of debt for money had and received, but so nevertheless that the statute shall run against a married woman entitled in possession for her separate use whether with or without a restraint upon anticipation, but shall not begin to run against any beneficiary unless and until the interest of such beneficiary shall be an interest in possession."

It appears to be now settled, that if time has once begun to run against a debt in the debtor's lifetime, it does not afterward cease to

(*m*) 10 Ves. 93.
(*n*) 51 & 52 Vict. c. 59.
(*o*) *Ibid.*
(*oo*) For an instance of this, see Re Swain, [1891] 3 Ch. 233.

[*1929]

run during the period which may elapse between his death and the time at which a personal representative is constituted to him: The rule in this respect appears to be the same in equity (*p*) as at law (*q*).

From when time runs.

In cases of fraud, or mistake, it has always been held by Courts of Equity that the statute runs from the discovery; because the laches of the plaintiff commence from that date (*r*).

It was held by Sir Anthony Hart, V.-C., in Sterndale *v.* Hankinson (*s*), that a bill which had been filed by one creditor on behalf of himself and all other creditors, prevented the Statute of Limitations (21 Jac. I.) from being a bar to the claim of another creditor, who had come in under the decree: And his Honor stated that he entertained no doubt that every creditor had, after the filing of the bill, an inchoate interest in the suit to the extent of its being con*sidered as a demand, and to prevent his debt being shut out because the plaintiff had not obtained a decree within the six years (*t*). But in the case of Re Greaves (*u*), Sir George Jessel, M.R., stated that creditors had better not rely upon the above decision in the future, and pointed out that the decision in Sterndale *v.* Hankinson depended upon a variety of circumstances, none of which exist at the present time (*x*). And it now appears to be settled that an action for administration brought by one creditor (not on behalf of himself and all other creditors) does not save the claim of another creditor which was barred by the Statute of Limitations before judgment (*y*).

Creditor's claims.

Another creditor will not be permitted in a creditor's action to set

(*p*) Freake *v.* Cranefeldt, 3 Mylne & Cr. 499. Boatwright *v.* Boatwright, L. R. 17 Eq. 71.

(*q*) *Ante*, p.*1843.

(*r*) Brooksbank *v.* Smith, 2 Younge & Coll. 58. Ecclesiastical Commissioners *v.* North Eastern Railway Co., 4 Ch. D. 860. An executor cannot protect himself by the Statute of Limitations from payment of a debt due from himself to his testator by deferring proof of the will. The probate will be considered to have relation to the testator's death, and the debt will be treated as assets in the executor's hands at that time: Ingle *v.* Richards, 28 Beav. 366. *Ante*, p.*243.

(*s*) 1 Sim. 393.

(*t*) As to this inchoate interest in an administration action, see Tollner *v.* Marriott, 4 Sim. 19. Watson *v.* Birch, 15 Sim. 523. Franco *v.* Alvares, 3 Atk. 342. But see *contra*, Re Hartley, 34 Ch. D. 742.

(*u*) 18 Ch. D. 551.

(*x*) See also Berrington *v.* Evans, 1 Younge & Coll. 434. Tatham *v.* Williams, 3 Hare, 347.

(*y*) Re Greaves, 18 Ch. D. 551.

up the Statute of Limitations against the party whose claim is the foundation of the judgment (*z*).

Writ of *ne exeat regno.*

There may be some doubt whether the writ of *ne exeat regno* has not in effect been abolished by the Debtors Act, 1869 (*zz*), but as the question does not seem to have been finally determined, it is thought better to preserve in this edition some account of the writ and its use.

The writ of *ne exeat regno* has been considered in the nature of equitable bail (*a*), and it was understood, that a Court of Equity proceeded in respect to it, by analogy to the proceedings at law in cases of legal bail (*b*).

Object of writ.

It has been said, that the object of this writ is to obtain *security from a person intending to leave the country, when the other party has not a legal remedy, and cannot hold him to bail (*c*). But it was settled, that, though a plaintiff, swearing to the balance of an account, might have bail at law, yet the Court of Chancery, holding a concurrent jurisdiction upon the head of account, the plaintiff might also have the writ of *ne exeat regno:* And where a creditor files a bill for an account and administration of the assets, if there is a *clear* affidavit of assets received, the Court of Chancery will grant the writ (*d*).

Writ of *ne exeat regno* against a married woman.

In Moore *v.* Meynell (*e*), Lord Cowper ordered a writ of *ne exeat regno* to issue against a married woman, the administratrix of a former husband, who had come to England to get in his property: And Lord Macclesfield afterward refused to discharge this order (*f*). And upon the authority of this case, Lord Hardwicke, in Jerningham *v.* Glass (*g*), where a wife was executrix of a former husband, and her second husband was

(*z*) Dan. Ch. Pr. 1023, vol. ii. pt. i. 6th edit.

(*zz*) 32 & 33 Vict. c. 62. Drover *v.* Beyer, 13 C. D. 243. Hands *v.* Hands, 43 L. T. 750.

(*a*) Haffey *v.* Haffey, 14 Ves. 261. And see Sobey *v.* Sobey, L. R. 15 Eq. 200. For forms of order, see Seton, 5th edit. 449–451. For practice, see Dan. Ch. Pr. 6th edit. p. 1648 *et seq.*

(*b*) Pannell *v.* Taylor, 1 Turn. & Russ. 103. See Jenkins *v.* Parkinson, 2 M. & K. 5. And see now stat. 32 & 33 Vict. c. 62, s. 6.

(*c*) Swift *v.* Swift, 1 Ball & B. 227.

(*d*) Jones *v.* Alephsin, 16 Ves. 471. But a residuary legatee cannot have a writ of *ne exeat regno* against a debtor of the testator, on the ground that he colludes with the executor: Graves *v.* Griffith, 1 Jac. & Walk. 646. Colverson *v.* Bloomfield, 29 Ch. D. 341.

(*e*) 1 Dick. 30.

(*f*) 3 Atk. 409, 410.

(*g*) 3 Atk. 409. S. C. *nomine* Ternegan *v.* Glass, Ambl. 62. S. C. *nomine* Jernegan *v.* Glass, 1 Dick. 107.

gone out of the kingdom, granted the writ against her alone. Again, in Moore *v.* Hudson (*h*) (July, 1821), Sir John Leach, V.-C., granted writs of *ne exeat regno* against husband and wife, executrix, the plaintiff undertaking not to serve more than one of the writs. But in Pannell *v.* Taylor (*i*) (Feb. 1823), Lord Eldon, after great consideration, decided that a writ of *ne exeat regno* against a *feme covert* executrix or administratrix could not be sustained. There seems to be no reason why a married woman may not be arrested under the provisions of sect. 4, sub-sect. 3, and sect. 6 of the Debtors Act, 1869 (*k*).

Attachment against wife executrix.

*In Bunyan *v.* Mortimer (*l*), a bill was filed against a husband and wife in respect of a demand against the wife as executrix: The husband, who was a bankrupt, had appeared for himself and his wife, and had gone abroad, and an attachment had issued against him for want of an answer: And it was held by Sir J. Leach, V.-C., that such an attachment could not be granted against the wife, until an order had been obtained that she should answer separately, and that she must have notice of the motion for that order.

Defendant can obtain order of *ne exeat.*

Defendants can obtain an order of *ne exeat* against a plaintiff (*m*). The application is made *ex parte* on affidavit (*n*).

Practice on application for a writ of *ne exeat.*

The usual practice is to require the plaintiff to give an undertaking as to damages and to accept short notice of motion (*o*).

The defendant may at any time after arrest apply to the court or a judge to rescind or vary the order or to be discharged from custody, or for such relief as may be just (*p*).

Affidavit in support of application.

Generally speaking, the affidavit, on which the application for a *ne exeat regno* is grounded, must be as positive as to the equitable debt, as an affidavit of a legal debt, to hold to bail (*q*): but in the case of partners and executors, in-

(*h*) Madd. & Geld. 218.

(*i*) 1 Turn. & Russ. 96.

(*k*) It appears, from the decree in Moore *v.* Meynell, that the *feme covert* in that case had large separate property, and had executed bonds, &c.: And Lord Eldon observed thereupon, that there may be a very great difference between the case of a married woman who has separate property and the case of a married woman who is administratrix, and as administratrix can have no separate property at all: Pannell *v.* Taylor, 1 Turn. & Russ. 96, 103.

(*l*) Madd. & Geld. 278.

(*m*) Whitehouse *v.* Partridge, 3 Sw. 365.

(*n*) R. S. C. Ord. LXIX. r. 1. As to furnishing copies of the affidavit to the defendant, see Ord. LXVI. r. 7 (j).

(*o*) Seton, 5th edit. 451.

(*p*) R. S. C. Ord. LXIX. r. 1.

(*q*) Jackson *v.* Petrie, 10 Ves. 164. Amsinck *v.* Barklay, 8 Ves. 597.

formation and belief is held sufficient (*r*). The affidavit ought to swear, or aver to the best of the knowledge and belief of the deponent, that assets have come to the hands of the executor *or administrator (*s*); and it should appear distinctly that he has a present intention to leave the country (*t*).

Proof required:

The debt in respect of which a writ of *ne exeat regno* is sought must be actually due and payable and for an ascertained amount (*u*). The evidence of the debt must be positive and clear (*x*), as also the defendant's intention to leave the country (*y*). The plaintiff must also clearly prove that he will be materially prejudiced in the prosecution of his claim by the defendant leaving the kingdom (*z*).

before time limited for payment:

If the court be satisfied that the defendant is going abroad to evade payment, it can make an order of *ne exeat*, although an order for payment has been made but the time for payment has not arrived (*a*).

now limited to cases falling within sect. 6 of the Debtors Act, 1869.

In Drover *v.* Beyer (*b*), Jessel, M.R., held that a writ of *ne exeat regno* is only to be issued in those cases which fall within sect. 6 of the Debtors Act, 1869. The case went to the Court of Appeal, and that court decided the appeal on another point, and do not appear to have expressed any opinion on Sir George Jessel's view of sect. 6. In the later case of Hands *v.* Hands (*c*), Jessel, M.R., followed his decision in Drover *v.* Beyer.

Section 6 of the Debtors Act, 1869 (*d*), provides as follows:—

Sect. 6 of Debtors Act.

"After the commencement of this Act a person shall not be arrested upon mesne process in any action.

"Where the plaintiff in any action in any of her Majesty's *Supe-

(*r*) Jackson *v.* Petrie, 10 Ves. 164. Rico *v.* Gualtier, 3 Atk. 501.

(*s*) Anon. 2 Ves. Sen. 489. A present vested interest, though capable of being divested, is a sufficient interest to support a writ of *ne exeat regno:* Howkins *v.* Howkins, 1 Dr. & Sm. 75, 78.

(*t*) Darley *v.* Nicholson, 1 Dr. & W. 66.

(*u*) Colverson *v.* Bloomfield, 29 Ch. D. 341. Anon. 5 N. R. 358. Flack *v.* Holm, 1 J. & W. 405.

(*x*) Perry *v.* Dorset, 19 W. R. 1048.

(*y*) *Ibid.*

(*z*) Drover *v.* Beyer, 13 Ch. D. 242. Vanzeller *v.* Vanzeller, 15 Jur. 115. Boehm *v.* Wood, T. & R. 332.

(*a*) Sobey *v.* Sobey, L. R. 15 Eq. 200. Whitehouse *v.* Partridge, 3 Sw. 365. But see Colverson *v.* Bloomfield, 29 Ch. D. 341, where the order was not served.

(*b*) 13 Ch. Div. 243.

(*c*) 43 L. T. 750.

(*d*) 32 & 33 Vict. c. 62.

rior Courts of Law at Westminster, in which, if brought before the commencement of this Act, the defendant would have been liable to arrest, proves at any time before final judgment, by evidence on oath to the satisfaction of a Judge of one of those Courts, that the plaintiff has good cause of action against the defendant to the amount of fifty pounds or upward, and that there is probable cause for believing that the defendant is about to quit England unless he be apprehended, and that the absence of the defendant from England will materially prejudice the plaintiff in the prosecution of his action, such Judge may in the prescribed manner order such defendant to be arrested and imprisoned for a period not exceeding six months, unless and until he has sooner given the prescribed security, not exceeding the amount claimed in the action, that he will not go out of England without the leave of the Court.

"Where the action is for a penalty or sum in the nature of a penalty, other than a penalty in respect of any contract, it shall not be necessary to prove that the absence of the defendant from England will materially prejudice the plaintiff in the prosecution of his action, and the security given (instead of being that the defendant will not go out of England) shall be to the effect that any sum recovered against the defendant in the action shall be paid, or that the defendant shall be rendered to prison."

Practice under Debtors Act.

The practice under sect. 6 of the Debtors Act, 1869, is now regulated by Ord. LXIX. of the Rules of the Supreme Court, 1883.

The exercise of the power of arrest under the section is discretionary (*e*).

Where the defendant is arrested under it, he can only be kept in prison until final judgment (*f*).

By sect. 4 of the Debtors Act it is provided that:—

Sect. 4, sub-s. 3, of Debtors Act.

"With the exceptions hereinafter mentioned, no person shall, after the commencement of this Act, be arrested or *imprisoned for making default in payment of a sum of money.

"There shall be excepted from the operation of the above enactment . . .

"(3) Default by a trustee or person acting in a fiduciary capacity and ordered to pay by a Court of Equity any sum in his possession or under his control."

(*e*) Hasluck *v.* Lehman, 6 Times Rep. 435. (*f*) Hume *v.* Druyff, L. R. 8 Ex. 214.

[*1935]

In an action against an executor or administrator, other than an action for administration of the assets, costs are in the discretion of the court or judge (*g*).† In such cases the liability to costs will, generally speaking, be governed by the ordinary rule, which throws them on the unsuccessful party: Accordingly, if an executor or administrator is sued in equity by a creditor for a debt of the deceased, and the creditor succeeds in establishing his demand, the court will direct the payment of the amount due to the creditor, together with his costs, out of the estate (*h*), but unless the estate is insufficient, no order is made with regard to the payment of the costs of the personal representative, it being supposed that he may reimburse himself out of the assets; so that if there be no further fund out of which he may reimburse himself, the costs must come out of his own pocket: And even if it should appear, upon taking the accounts, that there is no such fund, still the court will not give any directions with regard to his costs (*i*).

Costs.

General rule.

The question whether an executor or administrator who sues or defends, and is unsuccessful, is to be repaid his costs out of his estate, is totally distinct from the question whether he is liable to the other party to the action or not, and will be found dealt with later on in this chapter (*k*).

Question of allowance of costs to executor out of his estate.

But where a suit is instituted, either by creditors or residuary legatees, for a general administration of assets, so that the whole estate of the deceased is necessarily taken from the *hands of the personal representative, and distributed under the direction of the court, his costs of suit, as between solicitor and client, are, generally speaking, provided for; and even where the assets are insufficient to pay the creditors of the deceased, these costs, and any other costs, charges, and expenses properly incurred by him, continue the first charge on the estate (*l*).

Costs in an administration suit:

of the executor, &c., out of the fund:

(*g*) R. S. C. Ord. LXV. r. 1.

† See American note at end of this chapter.

(*h*) Dan. Ch. Pr. 1175, 1219, vol. ii. pt. i. 6th edit. Lyse *v.* Kingdon, 1 Coll. 184.

(*i*) Dan. Ch. Pr. 1219, vol. ii. pt. i. 6th edit. Morgan & Wurtzburg on Costs, 179.

(*k*) See *post*, pp. *1936, *1937.

(*l*) Tipping *v.* Power, 1 Hare, 405, 411. Gaunt *v.* Taylor, 2 Hare, 413. *Ante*, pp. *850, *851. Jackson *v.* Woolley, 12 Sim. 12. Ottley *v.* Gilby, 8 Beav. 602. Tanner *v.* Dancey, 9 Beav. 339. As to the priority of the executor's costs of an administration action over costs in a probate action, see Re Mayhew, 5 Ch. D. 596. See also Re Price, 31 Ch. D. 485. In an administration suit by a mortgagee who has obtained an order for sale of the real

The above is the general rule, but it is governed by the circumstances of each particular case, and in cases marked by fraud, evasion, or neglect of duty, the court will not merely refuse to allow the executor his costs out of the assets, but will order him to pay the costs of the suit, or of so much of the suit as is attributable to the breach of duty on his part (*m*); but mere negligence is not sufficient to deprive an executor or administrator of his costs (*n*).

cases in which the executor, &c., has to pay costs personally.

The rule that the costs of all proceedings in the Supreme Court are in the discretion of the judge does not apply to an executor or administrator who has not unreasonably instituted or carried on or resisted any proceedings, and he is not to be *deprived of any right to costs out of a particular estate or fund to which he would be entitled according to the rules heretofore acted upon in the Chancery Division (*o*).

An executor's or administrator's costs are not discretionary.

The effect of the rule may be stated to be that an executor or trustee is entitled to his costs (including costs, charges, and expenses) in any action to administer his estate unless it is established that he is guilty of such misconduct as justifies the judge in depriving him of them (*p*).

It is, of course, impossible to define exactly what will amount to such misconduct; where executors first withheld accounts and then rendered incorrect ones they were ordered to pay the costs of the action (*q*), and mere non-feasance has been held to amount to such misconduct as in Re Weall (*r*), where executors allowed their solicitor to retain and pay himself some costs

Misconduct.

and leasehold estate, the personal representatives are entitled, if the assets are deficient, to payment of their costs, charges, and expenses, in priority to the plaintiff's costs of the sale: Re Spensley's Estate, L. R. 15 Eq. 16. But see Pinchard *v.* Fellows, L. R. 17 Eq 421.

(*m*) Heighington *v.* Grant, 1 Phill. Ch. C. 600. Hewett *v.* Foster, 7 Beav. 348. Hide *v.* Haywood, 2 Atk. 126. See also Fell *v.* Lutwidge, Barnard, Chanc. 322. Avery *v.* Osborne, *ibid.* 352. Brown *v.* How, *ibid.* 358. Vaughan *v.* Thurston, Colles, 175. Bennett *v.* Atkins, 1 Younge & C. 247. Baker *v.* Carter, *ibid.* 250. Toner *v.* Thompson, 7 Sim. 145. Western *v.* Chapman, 1 Coll. 181. Tickner *v.* Smith, 3 Sm. & G. 42. Boynton *v.* Richardson, 31 Beav. 340. See also Dan. Ch. Pr. 1208–1218, 6th edit.

(*n*) Travers *v.* Townsend, 1 Moll. 496. See hereon Morgan & Wurtzburg on Costs, 179.

(*o*) Ord. LXV. r. 1.

(*p*) Re Love, 29 Ch. D. 348.

(*q*) Re Radcliffe, 50 L. J. Ch. 317.

(*r*) 42 Ch. D. 674.

which the court held to be unnecessary, and other costs which should have been charged against *corpus* but which the executors had improperly charged against income.

Executor bringing a useless action.

In the case of Re Clabburn (*s*), Bacon, V.-C., ordered the plaintiff, who was executor and trustee of the will, to personally pay the costs of an administration action which was held to be unnecessary. The estate in that case was a very small one, and the defendant beneficiaries had offered to concur in a special case to settle any point of doubt or difficulty arising under the will.

Trustee entitled to solicitor and client costs unless deprived on account of misconduct.

A trustee is, in an administration action, always entitled to his costs as between solicitor and client, unless a case of misconduct is made out against him such as to justify the judge in depriving him of them (*t*).

Appeal from an order refusing costs.

An order refusing a trustee his costs can always be appealed from (*u*), as he can only be deprived of them on the ground of *misconduct, and the question of misconduct or no misconduct is a matter on which an appeal lies (*x*); but the converse of this rule does not hold good, and if the judge, notwithstanding charges of misconduct, allows an executor or trustee his costs no appeal will lie, because, if by the misconduct of the executor or trustee he has lost his right to costs, then the discretion of the judge arises, and under sect. 49 of the Judicature Act, 1873, there is no appeal from such discretion (*y*).

Defaulting trustee: one of two only defaulting.

It is a clear rule that no costs are given to an executor or trustee who is a debtor to the estate until his debt is paid. If one of two executors is a debtor to the estate his co-executor is entitled to act by a separate solicitor, and if he does so he will be entitled to his costs (*z*). If two executors employ one solicitor, and one of the two executors is a debtor to the estate, the taxing-master on taxation finds what is the fair amount of costs to be attributed to the executor who is a debtor to the estate. This amount is deducted from the total costs of the

(*s*) 46 L. T. 848. As to an unnecessary action by a legatee, see Re Cope, W. N. 1885, p. 154.

(*t*) Re Love, 29 Ch. D. 348. See also Re Knight's Will, 26 Ch. D. 82.

(*u*) Ann. Pr. 1893, p. 1051, where the cases will be found conveniently cited.

(*x*) Re Love, *supra*. See also Re Knight's Will, 26 Ch. D. 82, 90.

(*y*) Charles *v.* Jones, 33 Ch. D. 80.

(*z*) Jessel, M.R., in Smith *v.* Dale, 18 Ch. D. 518.

two, and the balance after making such deduction is the amount allowed as costs of the other executor (*a*).

Principle on which the costs of a defaulting trustee are disallowed.

The principle seems to be that the costs due to the executor, who is indebted to the estate, are set off against his debt, and the proper form of order appears to be to order payment of the costs due to him from the estate, and for the order also to provide that such costs are not to be paid until he makes good the moneys due from him to the estate (*b*), and it makes no difference for this purpose whether the debt arises from a default of the executor or trustee, or is simply a debt due from him to the testator's estate.

Costs of a defaulting executor who becomes bankrupt.

If an executor who is indebted to the estate becomes bankrupt, his costs incurred prior to the bankruptcy are set off against the debt (*c*). The costs incurred subsequently to the bankruptcy stand on a different footing, and the question whether such costs will be paid out of the estate seems now to depend mainly on whether the debt due from the executor or trustee is discharged by the bankruptcy or not.

Conflicting decisions.

There are conflicting decisions on the point, one decision of Hall, V.-C. (*d*), and the other of North, J. (*e*).

Both cases arose under the Bankruptcy Act, 1869, in both cases the debt due from the defendant was a debt due in respect of a breach of trust, and by sect. 49 of the Bankruptcy Act, 1869, bankruptcy was not a discharge from a debt incurred by breach of trust. North, J., held that as the debt was not discharged the executor was not entitled to his costs incurred after the bankruptcy unless he paid the debt. Hall, V.-C., followed an earlier case of Bowyer *v.* Griffin (*f*), which North, J., declined to follow, and held the trustee entitled to the costs subsequently to the bankruptcy without making good his default, it seeming to him (as his lordship stated) to be consistent with good sense to hold that any person who, though adjudicated bankrupt, was retained as a party to an action, as executor or trustee, should be paid his costs (*g*).

(*a*) Smith *v.* Dale, 18 Ch. D. 516. See also McEwan *v.* Crombie, 25 Ch. D. 175. The earlier case of Watson *v.* Row, L. R. 18 Eq. 680, seems now to be overruled.

(*b*) Lewis *v.* Trask, 21 Ch. D. 864. Re Basham, 23 Ch. D. 195.

(*c*) Smith *v.* Dale, *supra*. Re Basham, *supra*. Re Vowles, 32 Ch. D. 243.

(*d*) Clare *v.* Clare, 21 Ch. D. 865.

(*e*) Lewis *v.* Trask, 21 Ch. D. 862.

(*f*) L. R. 9 Eq. 340.

(*g*) 21 Ch. D. 867.

In the case of Re Basham (*h*), Chitty, J., after a very full consideration of the authorities, followed the decision of North, J., and Pearson, J., also acted on the same rule in a later case (*i*).

It will be remembered that sect. 30 of the Bankruptcy Act of 1883 is more favorable to the bankrupt than sect. 49 of the Bankruptcy Act, 1869, and under sect. 30 of the Bankruptcy Act, 1883, a bankrupt executor, administrator, or *trustee, only remains liable to the estate for debts incurred by fraudulent breach of trust. The consequence is, that where his debt is for a fraudulent breach of trust he will get no costs at all; if the debt arise on any other ground, he will get his costs subsequently to the bankruptcy.

Sect. 30 of the Bankruptcy Act, 1883.

In meritorious cases, where the court has derived assistance in taking the accounts from having the executor represented by solicitors and counsel in the action, it will sometimes order him to have costs out of the estate notwithstanding he remains a debtor to the estate (*k*), but the solicitor for the defaulting executor should, before incurring costs, point out to the beneficiaries that the executor can only attend and assist in the proceedings if his costs are paid out of the estate, and obtain their sanction to his attending on those terms before the costs are incurred.

Costs sometimes given to a defaulting trustee on account of assistance rendered.

A trustee who has not been guilty of dishonesty, and who has made good to the estate the deficiency arising from an improper investment made by him, will not be ordered to pay costs (*l*).

Trustee making good his default: right to costs.

Where the estate is insufficient for payment of costs executors and trustees are entitled to payment of their costs, charges, and expenses, in priority to all other parties to an administration action (*m*).

Executors' and trustees' priority as to costs.

The executor or administrator of a defaulting trustee who accounts fairly for the assets come to his hands, is entitled to deduct his costs of the action out of the assets of his testator or intestate, even although they may be insufficient to repair the breach of trust (*n*).

Executor of a defaulting trustee.

(*h*) 23 C. D. 195.

(*i*) Re Vowles, 32 Ch. D. 243.

(*k*) See remarks of Chitty, J., in Re Basham, *supra*.

(*l*) Peacock *v.* Colling, 54 L. J. Ch. 743. Re Whiteley, 33 Ch. D. 347.

(*m*) Dodds *v.* Tuke, 25 Ch. D. 617. Wetenhall *v.* Dennis, 33 Beav. 285. Henderson *v.* Dodds, L. R. 2 Eq. 532.

(*n*) Haldenby *v.* Spofforth, 9 Beav. 195. Horne *v.* Shepherd, 3 Jur. N. S. 806.

In the case of Re Griffiths (*o*), an action was brought against the executor of a deceased executor for the ad*ministration of the estate of the original testator. The defendant properly accounted for all assets which had come to his hands. A balance was found due from the estate of the original executor to the estate of the original testator, which balance the estate of the original executor was insufficient to pay. Cotton, L.J., said that the strict order would be to allow the defendant out of the estate of the original testator all the costs incurred solely with reference to the original testator's estate, but as to the costs incurred by the defendant solely as representative of his own testator, the defaulting executor, he ought to be allowed them solely out of the estate of the defaulting executor. Fry, L.J., in the same case, pointed out that there was a third class of costs, coming under neither of the above heads, and they ought to be divided between the two funds (*p*).

Payments allowed as costs, charges, and expenses.

The following payments have been held to be included in costs, charges, and expenses; costs of proceedings by an administrator against a defaulting solicitor, taken *bona fide* for the benefit of the estate (*q*), the costs of an action properly defended by a trustee (*r*), costs of a sale rightly made by trustees under a power (*s*), costs of former trustees paid to the executor of the survivor in consideration of his transferring the trust property (*t*).

Order giving "costs, charges, and expenses."

An order giving trustees their costs, charges, and expenses, gives them something more than their costs of the action, and can be appealed from (*u*).

"Moderation" of bill of costs.

A trustee in passing his accounts is not allowed without question sums paid by him to his solicitor for costs; and the bill, although not submitted to a regular taxation, can be submitted to the taxing-master to be "moderated," *i.e.*, for *the taxing-master to disallow such items as are irregular and excessive (*x*).

A solicitor-trustee is only entitled to charge his costs and expenses out of pocket found by the taxing-master to have been properly in-

(*o*) 26 Ch. D. 465.

(*p*) See also Lyse *v.* Kingdon, 1 Coll. 184, 189. Palmer *v.* Jones, 43 L. J. Ch. 249. Re Kitto, 28 W. R. 411.

(*q*) Re Davis, 57 L. T. 755.

(*r*) Stirling, J., in Re Llewellin, 37 Ch. D. 317, 327.

(*s*) Re Mansel, 54 L. J. Ch. 883.

(*t*) Harvey *v.* Olliver, 57 L. T. 239.

(*u*) Re Chennell, 8 Ch. D. 482.

(*x*) Johnson *v.* Telford, 3 Russ. 477. Allen *v.* Jarvis, L. R. 4 Ch. 616. Aylesford *v.* Poulett, 63 L. T. 519.

[*1941] [*1942]

curred (*y*), unless he is specially authorized by the instrument creating the trust to make further charges (*z*), and although he be empowered to charge professional charges he is not entitled to charge for services which are not strictly professional, and not for matters which an executor ought to do without the intervention of a solicitor, such as for attendances to pay premiums on policies, attendances at the bank to make transfers, attendances on proctors, auctioneers, legatees, and creditors (*a*); but where an executor was authorized to make the usual professional or other proper and reasonable charges he was held entitled to charge for business not strictly of a professional nature transacted by him in relation to the trust estate (*b*). A solicitor should not in a will appointing him executor or trustee insert an authority to himself to charge for business not strictly professional, unless the testator has expressly instructed him to insert such a power (*c*).

Costs of a solicitor-trustee.

Duty of a solicitor inserting a power in a will authorizing him to charge.

A power authorizing a solicitor-trustee to charge for professional services is inoperative if the solicitor himself attests the will (*d*).

Effect of the solicitor attesting the will.

A solicitor-trustee who acts as solicitor for other parties in an action will be allowed his costs, and this none the less that he acts for himself as well, unless and except so far as the costs are increased by acting for himself as well as the others (*e*); but this does not apply to his costs in the *administration of the trusts outside a suit, the general principle that a trustee is not permitted to profit by his trust, or to place himself in a situation in which he may be tempted to deal with his trust with a view to his own profit, being held to apply to the latter case and not to the former (*f*). It is difficult to see the distinction between the two cases, and Chitty, J., and the Court of Appeal, in following (*g*) Cradock *v.* Piper (*h*), seem to have considered that the exception to

A solicitor-trustee acting for other parties to the action.

(*y*) Robinson *v.* Pett, 2 Lead. Cas. Eq. 214, 6th edit.

(*z*) Re Shearwood, 2 Beav. 338. Moore *v.* Frowd, 3 My. & Cr. 45. Re Wyche, 11 Beav. 209.

(*a*) Harbin *v.* Darby, 28 Beav. 325.

(*b*) Re Ames, 25 Ch. D. 72. But see Re Chapple, 27 Ch. D. 584.

(*c*) Kay, J., in Re Chapple, 27 Ch. D. 587.

(*d*) Re Barber, 31 Ch. D. 665. Re Pooley, 40 Ch. D. 1.

(*e*) Cradock *v.* Piper, 1 M. & G. 664. Re Barber, 34 Ch. D. 77. But see Re Corsellis, 34 Ch. D. 675.

(*f*) Lincoln *v.* Windsor, 9 Hare, 158. Re Barber, *supra.*

(*g*) In Re Barber, *supra,* and Re Corsellis, *supra.*

(*h*) 1 M. & G. 664.

the general rule made by Cradock *v.* Piper had been too long established to be disturbed (*i*).

Of the plaintiff in the action out of the fund.

After the costs of the executor or administrator are satisfied, the next claim on the fund arising from the personal estate is that of the plaintiff in the suit for his costs incurred in it (*k*).

One consequence of this right of the plaintiff to his costs of the suit appears to be, that if the executor or administrator, after the decree, makes payment of a debt with a view to be reimbursed out of the fund in court, his right to be so reimbursed must be postponed to the payment of the plaintiff's costs: that is, he must run the risk of the fund not being sufficient to pay the costs and also to reimburse him (*l*). Again, if the suit has been properly instituted and there are either assets in court or outstanding assets to be administered, it seems to have been held that the plaintiff's costs of suit must be paid out of those assets, whatever may be the hardship on the executor or administrator as to his demand on them in respect of having, before suit, paid other creditors of the estate with his own money (*m*).

But the personal representative's right of retainer for his *own debt will prevail, as there has already been occasion to show (*n*), against the plaintiff's right to his costs.

Costs of persons taking proceedings against an executor or administrator discretionary.

No appeal from an order refusing a legatee costs.

The costs of a person (beneficiary or creditor) bringing proceedings against an executor or administrator are now always in the discretion of the court (*o*), and an order refusing a beneficiary or creditor plaintiff his costs in an administration action, or making him pay costs, is an order within the discretion of the judge, under Ord. LXV. r. 1, and cannot be appealed from (*p*). And the same rule will apply to a creditor bringing the action.

Legatee plaintiff not entitled as of right to costs.

Prior to the rules of 1883, the rule was that a residuary legatee filing a bill for administration had a right to have his costs out of the estate, unless that right was displaced by some special ground for depriving him of them (*q*).

(*i*) As to a solicitor-trustee employing his partner, see Clack *v.* Carlon, 30 L. J. Ch. 639.

(*k*) Hearn *v.* Wells, 1 Coll. 323.

(*l*) Jackson *v.* Woolley, 12 Sim. 16, 17.

(*m*) Hearn *v.* Wells, 1 Coll. 323, 332, 333.

(*n*) *Ante*, pp. *884, *887.

(*o*) See R. S. C. 1883, Ord. LXV. r. 1.

(*p*) Re McClellan, 29 Ch. D. 495.

(*q*) Farrow *v.* Austin, 18 Ch. D. 58.

[*1944]

But under Ord. LXV. r. 1, the costs of a plaintiff legatee are absolutely in the discretion of the judge (*r*).

Hostile actions against executors or trustees, for instance, an action seeking to charge them with costs on the ground of misconduct (*s*), did not come under the above rule.

Old rule did not apply to hostile actions.

Where a beneficiary has mortgaged his legacy or share one set of costs only is allowed to him and his incumbrancer attending the proceedings, that set of costs is payable to the incumbrancer so far as may be necessary to satisfy the incumbrancer's costs of action, and after such payment the balance of costs is payable to the plaintiff (*t*).

Costs of beneficiary who has mortgaged his legacy.

A creditor bringing an administration action is entitled to solicitor and client costs if the estate proves insufficient for payment of the debts (*u*), at any rate where he sues on behalf of himself and the other creditors of the deceased (*x*), the *reason given being that it would be unreasonable that the general body of creditors should take advantage of the exertions of the particular creditor through whose instrumentality the fund has been recovered without paying him all his costs (*y*); and this rule applies equally to a creditor who obtains conduct of an action originally commenced by a legatee or next of kin (*z*).

Creditor's right to solicitor and client costs.

A plaintiff in a legatee's administration action is entitled to costs as between solicitor and client where the estate is sufficient to pay debts but insufficient to pay legacies in full (*a*); and it makes no difference that there has been a contest between the plaintiff and another legatee as to the proper mode of dividing the fund (*b*).

Legatee plaintiff.

The principle that a creditor plaintiff against an insolvent estate is entitled to his costs as between solicitor and client was extended by Kay, J. (*c*), to the case of a separate creditor suing on behalf of

(*r*) Re McClellan, 29 Ch. D. 495.

(*s*) Williams *v.* Jones, 34 Ch. D. 120.

(*t*) For form of order, see order in Higham *v.* Higham, Seton, vol. ii. p. 869, 4th edit. See also Re Goss, W. N. 1884, p. 192.

(*u*) Thomas *v.* Jones, 1 Dr. & Sm. 134.

(*x*) As to this, see *ante*, pp. *1906, *1907.

(*y*) Jessel, M.R., in Re Richardson, 14 Ch. D. 611, 612. See also the reason given by Kindersley, V.-C., in Thomas *v.* Jones, *supra*.

(*z*) Re Richardson, *supra*.

(*a*) Re Hervey, 26 Ch. D. 179.

(*b*) Re Wilkins, 27 Ch. D. 703. See also Henderson *v.* Dodds, L. R. 2 Eq. 532, where the action was to administer the realty, there being no personalty.

(*c*) Re McRea, 32 Ch. D. 613.

himself and all the other creditors of the testator, the testator being one of a firm of traders. The testator's private estate was solvent, and the separate creditors were paid in full, but the estate of the firm was insolvent.

In the case of Re Watson (*d*), a residuary legatee who brought an action to establish his identity was allowed costs out of the estate.

Of creditors coming in under the decree:

It was an established rule that creditors were not to be allowed any of the costs which they were put to, either in the first instance, or in any stage of the proof of their claims before the master under the decree (*e*). But now by Ord. LV. *r. 58, of the rules of the Supreme Court, 1883, it is provided, that "a creditor who has come in and established his debt in the Judges' Chambers under any judgment or order shall be entitled to the costs of so establishing his debt, and the sum to be allowed for such costs shall be fixed by the Judge, unless he shall think fit to direct the taxation thereof: and the amount of such costs, or the sum allowed in respect thereof, shall be added to the debt so established"(*f*). Where the creditor fails to establish his debt, he may be ordered to pay the costs of the inquiry consequent upon his claim, though he is not a party to the action (*g*).

The question out of what particular fund costs are to be paid scarcely comes within the scope of this work, but it will perhaps be well to refer to the general principles governing the subject.

Whether the costs are to be paid out of the particular fund or out of the general estate.

Where next of kin, or other persons claiming as a class under the will, succeed in establishing their title, their costs, as above defined, incurred in so doing, are paid out of the general estate before any apportionment of it takes

(*d*) 53 L. J. Ch. 305.

(*e*) Nor was a creditor entitled to costs, whose debts had been disallowed by the master, and allowed by the court on petition: Watkins *v.* Maule, Jacob, 105. But if his proof was beneficial to the estate, as where he saved by it the expense of a suit, and there were extraordinary costs, the court would give them on petition: Harvey *v.* Harvey, 6 Madd. 91.

(*f*) Usually a sum is named for costs of proof at the time the debt is allowed: Ann. Ch. Pr. 1893, p. 947. Under the General Order of 27th May, 1865, a fixed sum of 1*l.* 13*s.* 4*d.* if the debt was under 5*l.*, and 2*l.* 2*s.* if above, was usually allowed: Seton, 4th edit. 832. Morgan & Wurtzburg on Costs, 191. These costs are not added to the debt, but are costs in the action: Dan. Ch. Pr. 1034, 6th edit.

(*g*) Hatch *v.* Searles, 2 Sm. & G. 147. Yeomans *v.* Haynes, 24 Beav. 127. It appears that a special summons must be taken out to obtain payment: Dan. Ch. Pr. 1035, 6th edit.

[*1946]

place (*h*). So where a legacy is claimed, in an administration suit, by two legatees adversely to each other, the costs must be borne by the testator's estate (inasmuch as the question arises on his will) and not by the legacy (*i*). But where a residuary estate was divisible amongst several persons, and an account was made up, and the adults received their shares: and the *infants filed a bill for an account against the executors and the other residuary legatees, who, being satisfied, deprecated the proceedings, and the accounts turned out to be substantially correct; it was held, that the costs of the suit were payable out of the plaintiff's share alone (*k*). The rule has been laid down to be, that if the executors, admitting a legacy to be payable, sever it from the estate, and a dispute arises between the persons or some of the persons to whom the legacy belongs, and the court has to decide to whom it belongs, there the particular fund bears the costs; *secus*, if the dispute arises between the persons claiming the residue and the residuary legatee whether it is payable (*l*). Where there are no other assets, the costs must be paid out of the specific legacies *pari passu* (*m*). It is now settled that the costs of an administration action, so far as they have been increased by the administration of the real estate, are to be borne by that real estate (*n*). It would seem that where real estates are sold under a decree in an administration suit, the costs incurred by such sale will be payable out of the estates sold (*o*). If the costs of an administration suit are increased by its being also a suit for the execution of the trusts of a settlement, the court has held that the additional costs must be borne by the settlement fund (*p*).

A legacy severed from the rest of the estate.

Administration of real estate.

The costs of a suit for the administration of a testator's estate are payable out of the residue generally and not primarily out of a lapsed share, as there is no residue of personal estate until after pay-

(*h*) Shuttleworth *v.* Howarth, 1 Cr. & Ph. 228.

(*i*) Wilson *v.* Squire, 13 Sim. 212. See also Jolliffe *v.* East, 3 Bro. C. C. 25. Ripley *v.* Moysey, 1 Keen, 578. Eyre *v.* Marsden, 4 M. & Cr. 231.

(*k*) Mackenzie *v.* Taylor, 7 Beav. 467. Thompson *v.* Clive, 11 Beav. 475. Compare Hilliard *v.* Fulford, 4 C. D. 389.

(*l*) Atty.-Gen. *v.* Lawes, 8 Hare, 43, by Wigram, V.-C. See also Morgan & Wurtzburg on Costs, 169, 170.

(*m*) Bristow *v.* Bristow, 5 Beav. 289. Cookson *v.* Bingham, 17 Beav. 262.

(*n*) Re Middleton, 19 Ch. D. 552. Patching *v.* Barnett, 51 L. J. Ch. 74. Re Roper, 45 Ch. D. 126.

(*o*) Barnwell *v.* Iremonger, 1 Dr. & Sm. 242, 255.

(*p*) Irby *v.* Irby, 24 Beav. 525. Skirrow *v.* Skirrow, 17 W. R. 759.

[*1947]

ment of the debts, funeral and testamentary expenses, and costs of the administration of the *estate of the testator (*q*). And real estate which has descended to the testator's heir-at-law, not because it was not originally disposed of by the will, but by reason of a subsequent forfeiture by the devisee under the provisions of the will, is not liable to pay the costs of an action to administer the estate in priority to specifically devised and bequeathed freehold and leasehold estates (*r*).

In what cases the plaintiff shall pay the executor costs.

It remains to consider in what cases the executor or administrator is entitled to receive his costs from the plaintiff. If a creditor plaintiff brings or continues an action after he has been correctly informed that there are no assets applicable to the payment of his debt, he will be ordered to pay the costs, wholly or from the time he receives the information (*s*). In Robinson *v.* Elliott (*t*), a creditor filed a bill against an executrix, and she stated, by her answer, that there were no assets for the payment of his debt; he, however, persisted in the suit; and the result of the account in the master's office was, that there were no assets unadministered, though the executrix was charged with more than she had admitted: And it was held, that the bill should be dismissed without costs as against the executrix. In another case (*u*), on further directions, the case appeared to be, that application had been made to an executor for an account, but that he gave no account: The bill was then filed; and by his answer, the defendant stated the accounts; but the plaintiff took a decree for an account: It turned out, on the master's report, that the account given by the answer was correct: and the question then was, as to costs: The vice-chancellor gave the plaintiff the costs of the suit up to the decree; and the defendant the costs of the subsequent proceedings.

Useless proceedings by a legatee.

*Where the proceedings brought by a legatee are unnecessary or improper, he will not be allowed his costs out of the estate, as, for instance, where the plaintiff, a residuary legatee, suing by his next friend, sought to charge the defendant with costs on the ground of misconduct and failed in making out the mis-

(*q*) Trethewy *v.* Helyar, 4 C. D. 53, Jessel, M.R., dissenting from Gowan *v.* Broughton, L. R. 19 Eq. 77. See also Fenton *v.* Wills, 7 C. D. 33.

(*r*) Hurst *v.* Hurst, 28 Ch. D. 159. But see Scott *v.* Cumberland, L. R. 18 Eq. 578.

(*s*) Bluett *v.* Jessop, Jacob, 240. King *v.* Bryant, 4 Beav. 460, 462. Fuller *v.* Green, 24 Beav. 217.

(*t*) 1 Russ. Chanc. Cas. 599. See Dan. Ch. Pr. 1220, 6th edit.

(*u*) Anon. 4 Madd. 373.

conduct (*x*), and the legatee will be ordered to pay the costs of such improper proceedings, as, for instance, the costs of taking unnecessary accounts (*y*), or an abortive attempt to remove a trustee (*z*), and the court will not permit the costs occasioned by improper litigation to be paid out of the estate (*a*).

In the case of Ackers *v.* Ackers (*b*), North, J., ordered a useless administration action to be stayed, and the plaintiff to pay the costs of the action; the defendant being at liberty to take out of the estate any costs in default.

(*x*) Williams *v.* Jones, 34 Ch. D. 120.
(*y*) Croggan *v.* Allen, 22 Ch. D. 101. Re Blake, 29 Ch. D. 913.
(*z*) Fane *v.* Fane, 13 Ch. D. 228.
(*a*) Brown *v.* Burdett, 40 Ch. D. 244.
(*b*) W. N. 1884, p. 82. See also Re Ormston, 58 L. T. 74. Affirmed on appeal, 59 L. T. 594.

---

†*Equity jurisdiction—Fraud—Trusts.* Courts of equity take jurisdiction against executors and administrators, as in other cases, only where there is no adequate remedy at law, and after the exhaustion of the legal remedies against the parties principally liable. Hazen *v.* Durling, 1 Gr. Ch. 133; Winegar *v.* Newland, 44 Mich. 367.

The jurisdiction is chiefly invoked in matters involving fraud or breach of trust. Thus equity will relieve a surety, who has been induced by the fraud of an insolvent administrator to sign his bond, from liability for the debt of the administrator to the intestate, although wrongly charged against him by the Probate Court at its face value. Lyon *v.* Osgood, 58 Vt. 707. So, it will interpose at the suit of creditors to set aside a fraudulent conveyance by the deceased, where the land is required for the payment of debts, Fellows *v.* Lewis, 65 Ala. 343; or to set aside a chattel mortgage. Currie *v.* Knight, 7 Stew. (N. J.) 485. And the administrator of the deceased grantee must be made a party defendant on his death without leaving heirs. Hays *v.* Montgomery, 118 Ind. 91. So, a court of equity may set aside a fraudulent transfer of personal property by the administrator, Moore *v.* American Loan & Trust Co., 115 N. Y. 65; or a fraudulent sale of land by the executor under a testamentary power of sale, Cascaden *v.* Cascaden, 140 Pa. St. 140; Hawley *v.* Tesch, 72 Wis. 299; but the conveyance will only be set aside where the grantee is a party to the fraud. Cascaden *v.* Cascaden, *ubi supra.* So, it will set aside a conveyance fraudulently procured by the administrator from the heirs. O'Conner *v.* Ward, 60 Miss. 1025. So, where the administrator procures land to be sold for taxes and buys it in for himself. Hawkins *v.* Lague, 48 Ark. 544. In the case of a fraudulent conveyance by the decedent the jurisdiction of the Court of Equity is not excluded by the fact that an action of ejectment might lie in a court of law. Crane *v.* Conklin, Saxt. (N. J.) 346. And equity jurisdiction generally in matters of fraud is not barred by the the fact of a previous accounting in the Probate Court. Fisher *v.* Banta, 66 N. Y. 468; Bechtold *v.* Read, 4 Dick. (N. J.) 111.

In like manner a court of equity will exercise jurisdiction in all matters of trust arising under a will, Hooper *v.*

Hooper, 9 Cush. 122; *e. g.* for discovery as to the management of the trust and account for mismanagement, Ashhurst *v.* Potter, 2 Stew. (N. J.) 625; or to enforce a devise in trust for a charitable use, Halsey *v.* Convention, 75 Md. 275; or the establishment of a trust against the decedent in property held by him, Ray *v.* Simmons, 11 R. I. 266; Wager *v.* Wager, 89 N. Y. 161; or for the recovery of trust funds from the executor by the surviving trustee. Lippincott *v.* Stokes, 2 Halst. Ch. 122. So, where executor delivers property to the legatees before paying debts, the creditors may treat the act as a breach of trust, and may pursue the assets into the possession of the legatees. Buie *v.* Pollock, 55 Miss. 309. Settlement in the Probate Court is no bar to a suit in equity by heirs for assets fraudulently withheld by the executor. Van Bokkelen *v.* Cook, 5 Sawy. 587. And a suit against the estate for money embezzled is not a waiver of the right of a creditor to enforce his judgment in equity against property in the executor's hands purchased with the embezzled funds. Wells *v.* Robinson, 13 Cal. 133. An executor may even sue his co-executor for loss to the estate from their joint misuse of the funds of the estate, if his *cestui que trust* has not shared in the wrongdoing. Hook *v.* Haywood, 48 Hun 330.

Protection of estate—Receiver—Courts of equity will entertain an action for the purpose of protecting the estate by the appointment of a receiver, Briarfield Iron Works *v.* Foster, 54 Ala. 622; Hill *v.* Arnold, 79 Ga. 367; where an executor is guilty of an abuse of his trust. Boyd *v.* Murray, 3 Johns. Ch. 48. And this is a matter of right when the funds are in danger. Jenkins *v.* Jenkins, 1 Paige 243. So, a receiver will be appointed where the administrator is shown to be hindering and delaying the collection of debts, Duval *v.* Marshall, 30 Ark. 230; or neglecting to collect and apply the rents where they are needed for the debts, McKaig *v.* James, 66 Md. 583; or where the executor is holding the lands adversely to the estate and appropriating the profits to his own use, and there is danger of waste. Stith *v.* Jones, 101 N. C. 360. But chancery will not appoint a receiver at the suit of the creditors against an executor *de son tort*, there being no legal personal representative, and there being a complete legal remedy against the intruder, Walker *v.* Drew, 20 Fla. 908; although where the defendant was in possession of the land, and was insolvent, and there was danger of waste, a receiver may be appointed in such case. Flagler *v.* Blunt, 5 Stew. (N. J.) 518.

Injunction. In order to preserve the estate *pendente lite* equity will enjoin the prosecution of conflicting claims. Johnson *v.* Brady, 24 Ga. 131. So, an executor may be restrained from selling lands for the payment of a debt that is barred by the Statute of Limitation. Butler *v.* Johnson, 111 N. Y. 204. So, an executor may be restrained from all further interference with the estate. Elmendorf *v.* Lansing, 4 Johns. Ch. 562; at the suit of his co-executor. Id.; Sheehan *v.* Kennelly, 32 Ga. 145. But equity will not restrain a sale of property decreed by the Probate Court for causes that could have been set up in that court, Bailey *v.* Ross, 68 Ga. 735; nor set aside such decree at the suit of a distributee, Hart *v.* Hart, 39 Miss. 221; nor enjoin the execution of a power of sale on the allegation of illegal probate, Galbreath *v.* Everett, 84 N. C. 546; or in the absence of any testamentary trust, on an allegation that the power was void. Mellen *v.* Banning, 60 Hun 151. To sustain an injunction against the sale of real property there should be an allegation that the administrator is insolvent. Ashburn *v.*

Ashburn, 16 Ga. 218. And even an executor who has been removed from office will not, pending an appeal from the order, be injoined from dealing with the funds of the estate, unless there is reason to fear damages to the estate. Estate of Neal, 17 Phila. 486.

But equity will not, upon application of a creditor, restrain a sale of land by the trustee, where he has no personal estate in his hands, and the will has given him a discretionary power of sale of real estate held in trust, and there is no suggestion of an intended abuse of the trust. Proctor *v.* Heyer, 122 Mass. 525. So, equity will not restrain the sale of timber under an express testamentary direction to sell real property as seemed best to the executor, and pay legacies. Keller *v.* Ogsbury, 121 N. Y. 362. So, the residuary devisee cannot maintain a bill in equity, to compel the execution of a contract of the deceased, against executors and vendor. Lowry *v.* Lowry, 10 Phila. 105.

Creditor's suits. A creditor may maintain a bill to obtain satisfaction of his debt, Mallory *v.* Craige, 2 McCart. 73; on the ground of a trust to pay debts. McKay *v.* Green, 3 Johns. Ch. 56. So, a creditor's bill lies against the administrator and heirs, Kelly *v.* Lively, 23 W. Va. 1; and a simple creditor at large may sue the personal representative of a deceased debtor in equity for account of assets, payment of debts, and general relief, Beverly *v.* Rhodes, 86 Va. 415; and the court may make the heirs and next of kin parties to such equitable proceeding, and compel an accounting. Warden *v.* McKinnon, 94 N. C. 378. In an action against an administrator for a discovery and distribution, by a creditor, all other creditors are entitled to notice thereof to come in and *pro rata* share the proceeds. Thompson *v.* Brown, 4 Johns. Ch. 619. And the creditor's bill and decree for accounting excludes any other jurisdiction for other creditors. Kent *v.* Cloyd, 30 Gratt. 555.

Chancery may order the payment of the debt due, on a bill by a creditor for the sale of land, and answer alleging sufficient personal property, and disputing the claim. Creswell *v.* Kennedy, 3 MacArth. 78. So, the Court of Chancery may establish a devastavit and render a personal decree against executors, *Mississippi* (Code, § 976); Clopton *v.* Haughton, 57 Miss. 787; or entertain a suit by a legatee against the administrator of his executor for a conversion and waste. Coates *v.* Mackin, 43 Md. 127. And a creditor may sue the administrator for a devastavit before final settlement of his accounts, although a distributee cannot. Dobbins *v.* Halfacre, 52 Miss. 561. Equity will determine the claims of an administrator against the estate at suit of his co-administrator, Petty *v.* Young, 16 Stew. (N. J.) 654; and although the claim has been allowed by the commissioners of the estate (in the absence of proper parties), Adams *v.* Adams, 22 Vt. 50; and may at suit of creditors, on the other hand, compel the collection of a debt of the administrator to the estate by sale of land mortgaged by him for its security. Raynor *v.* Gordon, 16 Hun 126.

Equity has concurrent jurisdiction with the Probate Court to sell lands and distribute assets after settlement. McGowan *v.* Lufburrow, 82 Ga. 523. And where the personal estate is insufficient for the payment of debts, a creditor's suit may be begun by a single creditor in behalf of himself and others. Arnold *v.* Casner, 22 W. Va. 444. So, equity may relieve against the bar of a claim for non-presentment where "peculiar circumstances entitle the party to equitable relief." Roaf *v.* Knight, 77 Ia. 506; Colle. § 2421.

On the other hand, a bill in equity does not lie against the sureties on

an administration bond (not trustees). Edes *v.* Gary, 46 Md. 24. Pending proceedings in the Probate Court for the settlement of an estate, the next of kin cannot have the question of their heirship determined in equity, and certain provisions of the will declared invalid. Siddall *v.* Harrison, 73 Cal. 560. So, a residuary legatee cannot maintain a bill for property sold in violation of the trust, though all the dispositions of the will prior to the residuary clause had been satisfied, but there had been no final settlement. Morgan *v.* Rotch, 97 Mass. 396.

Action for legacies. A legatee may file a bill in equity for the recovery of his legacy. Stevens *v.* Post, 1 Beas. 408; Sparhawk *v.* Buell, 9 Vt. 41. A joint action may be brought by co-legatees, Stanford *v.* Murphy, 60 Ga. 154; or by several legatees whose legacies depend on the same right and will be affected by the same decree. Catlin *v.* Wheeler, 49 Wis. 507. And the legatee's right to sue for his legacy in equity is not affected by the fact that an action at law is maintainable for it, Hedges *v.* Norris, 5 Stew. (N. J.) 193; or that payment might be enforced in the Probate Court. Millsap *v.* Stanley, 50 Ala. 319. In Alabama, he may sue in equity irrespective of the assent of the executor to the legacy, while such assent is necessary to a suit in the Probate Court. Millsap *v.* Stanley, 50 Ala. 319. And he may resort to chancery before proceedings for final settlement are begun in the Probate Court. James *v.* Faulk, 54 Ala. 184. So, although the executor's account has been settled, the legatee may have a bill for discovery as to investment of funds and for security for his legacy. Carpenter *v.* Gray, 10 Stew. (N. J.) 389. Equity has jurisdiction to compel executors to transfer specific property bequeathed to a legatee, although settlement is pending in the Probate Court, and although suit might lie on the bond. Colt *v.* Colt, 32 Conn. 422. So, the legatee of a chattel of peculiar value may have an injunction to prevent the executor's sale of the chattel for debts in exoneration of other property. Alexander *v.* Worthington, 5 Md. 471. Even a settlement of account in the Probate Court is no bar to an action by the legatee for accounting and payment, where the special fund charged with the legacy was excluded from the probate settlement. Van Rensselaer *v.* Van Rensselaer, 113 N. Y. 207.

A court of equity may compel the executor to bring into court the money in his hands, or to give security, when the legacies are payable at a future day. Lupton *v.* Lupton, 2 Johns. Ch. 614. So, equity may take jurisdiction before the expiration of the statutory period for paying legacies (eighteen months) where a nonresident executor, without bonds, has sold and removed property from the state, Walker *v.* Johnson, 82 Ala. 347; and may entertain a legatee's suit against a foreign executor who has assets and has taken out ancillary letters within the jurisdiction of the court. Gravely *v.* Gravely, 25 S. C. 1. So, equity has jurisdiction to decree an account of advancements. Key *v.* Jones, 52 Ala. 238. And a legatee, whose legacy is made a condition of the residuary bequest, may enforce payment in equity against the residuary legatee. State *v.* Hewlett, 48 Md. 138. The decree for payment of a legacy is the individual debt of the executor, and is subject to attachment in his hands against the legatee by force of the statute, in *Alabama* (R. C. § 2951). Calhoun *v.* Whittle, 56 Ala. 138. But in Pennsylvania an administrator *de bonis non* can sue the administrator of a deceased devisee only in the Probate Court to enforce a personal charge of the legacy. Pierce *v.* Livingston, 80 Pa. St. 99; but see Estate of Ditsche, 13 Phila. 288.

And the specific legatee of a debt due from A. to the testator must sue on it at law in the executor's name, and a bill in equity lies only on the executor's refusal to permit such suit. Hayes *v.* Hayes, 18 Stew. (N. J.) 461.

Action for distributive share. Next of kin may bring suit in equity for their distributive share, if there has been no decree in the Probate Court for distribution, Dorsheimer *v.* Rorback, 8 C. E. Gr. 46; and in the case of nonresident next of kin, although notice has been given to them of the beginning of proceedings for final distribution in the Probate Court. Alexander *v.* Leakim, 72 Md. 199. A distributee may sue in equity before application to the Probate Court, Teague *v.* Corbitt, 57 Ala. 529; and may file a bill in equity against the sureties of a deceased administrator. Carrol *v.* Connet, 2 J. J. Marsh. 195. But distributees cannot file a bill in equity against the administrator of an insolvent estate for an account of assets not collected or not distributed without an allegation that a surplus will remain after claims of creditors have been paid in full, or that the unpaid claims are barred. Wright *v.* Dunklin, 83 Ala. 317.

To enforce a charge or lien. Equity has jurisdiction to direct the sale of land charged with a legacy, Rennie *v.* Crombie, 1 Beas. 457; and see Vol. III. p. 198, n., *ubi supra;* exclusive of courts of law, Lockwood *v.* Stockholm, 11 Paige 87; and, in general, of the Probate Court. Bevan *v.* Cooper, 72 N. Y. 317; but see p. 199, n., *ubi supra.* After final settlement of an estate in the Probate Court a legatee whose legacy is charged upon land may sue to establish the lien, without alleging insufficiency of the personal estate. Davidson *v.* Coon, 125 Ind. 497.

In like manner, equity has jurisdiction to enforce a lien upon a decedent's land, Goodnow *v.* Wells, 67 Ia. 654; *e. g.*, to enforce a judgment against the real property (pending exceptions to an administrator's account in the Probate Court), Foster *v.* Knowles, 15 Stew. (N. J.) 226; or to enforce a vendor's lien (the administrator of the deceased purchaser being a necessary party). Reedy *v.* Armistead, 31 Miss. 353. And a creditor may file a bill to enforce a vendor's lien in favor of the decedent, this being in effect a bill to collect personal assets endangered by the negligence of the administrator, and not to enforce a debt against the real property of the decedent. Kelly *v.* Kelly, 15 Lea 194. Creditors may also have a bill in equity to subject the real estate of the deceased to the payment of judgments recovered against the executor, Loving *v.* Ashlin, 76 Va. 907; which is rendered unnecessary in most of the United States by the provisions for sale by order of the Probate Court, see Vol. III. p. 166, n., *ubi supra;* or to subject the decedent's lands in the hands of heirs and devisees (but not of *bona fide* purchasers) to the payment of his debts, Easley *v.* Barksdale, 75 Va. 274; see Vol. III. p. 207, n., *ubi supra;* or to enforce creditor's claims against proceeds of condemnation of real property paid into the hands of the city treasurer, Youmans *v.* Youmans, 11 C. E. Gr. 149. But where a mortgagor has conveyed away all his interest in the mortgaged premises, and dies before the commencement of a foreclosure suit, his personal representative is not a necessary party if no decree is asked for the deficiency. Hibernia Savings & Loan Society *v.* Herbert, 53 Cal. 375; Miner *v.* Smith, 53 Vt. 551.

Actions for accounting. The jurisdiction of equity and probate courts over accountings and settlement of estates is concurrent, Glenn *v.* Billingslea, 64 Ala. 345; Frey *v.* Demarest, 1 C. E. Gr. 236; but chancery will assume jurisdiction only for special reasons, Frey *v.* Demarest, *ubi supra;* Salter *v.* Williamson, 1 Gr. Ch. 480;

Decker *v.* Decker, 12 C. E. Gr. 239; (although it is said to be otherwise, in Alabama, James *v.* Faulk, 54 Ala. 184); and will exercise it sparingly. Young *v.* Brown, 75 Ga. 1. There must be some question of purely equitable cognizance involved, Clark *v.* Eubank, 65 Ala. 245; such as a discovery, where individual and trust funds have been mingled by an administrator, Frey *v.* Demarest, 1 C. E. Gr. 236. But the mere failure to file an inventory is not of itself sufficient ground, Freeland *v.* Dazey, 25 Ill. 294; nor mere information and belief that there are no outstanding debts. Sullivan *v.* Lawler, 72 Ala. 68. But where an administrator is guilty of misconduct, equity will appoint a receiver and decree final settlement, Duval *v.* Marshall, 30 Ark. 230; or where there is a threatened misappropriation of the assets by an insolvent administrator with insufficient bond. Butler *v.* Sisson, 49 Conn. 580.

Where nothing was done in the Probate Court before bill in equity filed, and not even an inventory filed for two years, equity will continue the proceedings for a settlement of account after answer filed to the bill stating an account. Clarke *v.* Johnston, 2 Stockt. 287. So, on a bill by creditors to set aside a fraudulent conveyance and subject the land to payment of their debts, jurisdiction of the settlement of the estate will be assumed by the Court of Chancery so that it can be equitably administered. Fellows *v.* Lewis, 65 Ala. 343. So, chancery may establish a devastavit and render a personal decree against the executor on the settlement, by statute, in *Mississippi* (1871 Code, § 976). Clopton *v.* Haughton, 57 Miss. 787. So too, a foreign administrator who has not accounted may be called to account in equity, Bryan *v.* McGee, 2 Wash. C. C. 337; but a court of equity cannot require a foreign ancillary administrator to pay over foreign assets to the local administrator. Lines *v.* Lines, 142 Pa. St. 149.

In matters of accounts, however, where jurisdiction of the Probate Court is once invoked, it excludes chancery jurisdiction. Van Mater *v.* Sicklen, 1 Stockt. 483; Goff *v.* Robinson, 60 Vt. 633. But the Court of Chancery may take jurisdiction of the final account, although the executor has filed his intermediate account in the Probate Court. Merselis *v.* Merselis, 3 Halst. Ch. 557. In Arkansas, the Probate Court has exclusive jurisdiction in matters of account. West *v.* Waddill, 33 Ark. 575.

Review of Probate Court proceedings. Chancery will set aside a final decree of the Probate Court for fraud, Van Meter *v.* Jones, 2 Gr. Ch. 520; Fosworth *v.* White, 72 Ala. 224; Penn *v.* Penn, 39 Mo. Ap. 282; or mistake, Seller's Appeal, 36 Conn. 186; or illegality, Pollard *v.* Barkley, 117 Ind. 40; 1881 R. S. S. 2396; if "injustice has been done." Humphreys *v.* Burleson, 72 Ala. 1. In a proper case of mistake or fraud chancery will open a decree settling an executor's account, Black *v.* Whitall, 1 Stockt. 572; Weyman *v.* Thompson, 5 Dick. (N. J.) 8, 22; or will resettle it, Hankins *v.* Layne, 48 Ark. 544; West *v.* Waddill, 33 Ark. 575; *e. g.*, where an administrator has in the Probate Court confused in one his accounts as surviving partner and administrator of the deceased partner. Vincent *v.* Martin, 79 Ala. 540. And in the resettlement of an account it will correct improper charges by the accountant against himself. Trimble *v.* James, 40 Ark. 393. So, a court of equity may vacate allowances to executors obtained by fraud, Jones *v.* Graham, 36 Ark. 383; or annul the probate of a will, Everhart *v.* Everhart, 34 Fed. Rep. 82; or reinstate a will, where probate was denied. Wetherbee *v.* Chase, 57 Vt. 347. Equity has power to correct a mistake

in a will (misnomer of legatee). Wood *v.* White, 32 Me. 340. By statute a court of equity may after probate annul a will for the incapacity of the testator, in *New York* (Laws 1858, c. 288; 1879, c. 316), Pryer *v.* Howe, 40 Hun 383; or review a contested probate, in *Alabama* (1886 Code, § 2000), Knox *v.* Paull, 95 Ala. 505; or entertain an appeal from a decree of the Probate Court on accounting, in *Maryland* (Code, Art. 5, § 44). State *v.* McCarty, 64 Md. 253.

But equity will not, in general, review decrees of the Probate Court except for fraud or mistake, Boulton *v.* Scott, 2 Gr. Ch. 231; Conover *v.* Conover, Saxt. (N. J.) 403; Mock *v.* Pleasants, 34 Ark. 68; and it does so sparingly, Humphreys *v.* Burleson, 72 Ala. 1; and the fraud must be in the procurement of the decree. Watts *v.* Frazer, 80 Ala. 186. Equity will not review a settlement in the Probate Court, where no fraud is alleged, for mere irregularity, Hankins *v.* Layne, 48 Ark. 544; West *v.* Waddill, 33 Ark. 575; nor for omissions in the account or matters available in Probate Court, Watts *v.* Frazer, 80 Ala. 186; nor, as to matters settled by final account, for the accountant's fraud in the exercise of the trust. Sever *v.* Russell, 4 Cush. 513. And the fraud must be that of the parties interested. Thus, it is not sufficient to support his bill that the legatee was persuaded to withdraw a caveat to the probate of the will by false representations of persons not interested in the estate. Kinney *v.* Emery, 11 Stew. (N. J.) 101. Equity has no jurisdiction to remove an executor, although it may remove a trustee, Leddell *v.* Starr, 4 C. E. Gr. 159; Bolles *v.* Bolles, 17 Stew. (N. J.) 385; nor to revise and correct the probate of a will indirectly, Chase *v.* Winans, 59 Md. 475; nor to remove a cloud on the title of lands devised, at the suit of an adverse claimant, on the ground of the invalidity of the will, McDonald *v.* White, 130 Ill. 493; nor to construe the will for that purpose, at the suit of one who claims the land adversely to the testator. Ruppel *v.* Schlegel, 55 Hun 183. When an action is brought to contest the validity of a will, the court should not, in such proceeding, construe or interpret it. Cox *v.* Cox, 101 Mo. 168. So, on a bill to contest a will, if the will be decreed to be invalid, it is not competent for the court to proceed further. Dower *v.* Church, 21 W. Va. 23.

Actions between co-executors. A suit in equity may be brought by a personal representative against his co-executor or co-administrator for the enforcement of a debt due by the latter to the estate, Petty *v.* Young, 16 Stew. (N. J.) 654; Wurts *v.* Jenkins, 11 Barb. 546; but see Whiting *v.* Whiting, 64 Md. 157; and, in general, an action at law will not lie for such debt. Ransom *v.* Geer, 3 Stew. (N. J.) 249; Martin *v.* Martin, 13 Mo. 36; Simon *v.* Albright, 12 Serg. & R. 429; see too, McGregor *v.* McGregor, 35 N. Y. 221; Smith *v.* Lawrence, 11 Paige 208; Rinehart *v.* Rinehart, 2 McCart. 45; Dare *v.* Allen, 1 Gr. Ch. 288. So, a bill in equity may be filed by an executor against his co-executor, for waste and conversion of assets, Matthews *v.* Hoagland, 3 Dick. (N. J.) 455; Price *v.* Price, 8 C. E. Gr. 428; and for accounting and receiver in such case, Price *v.* Price, *ubi supra;* or for accounting and injunction, Elmendorf *v.* Lansing, 4 Johns. Ch. 562; especially against an insolvent co-executor, Sheehan *v.* Kennelly, 32 Ga. 145. So, for overpayment of a distributive share, Steinman *v.* Saunderson, 14 Serg. & R. 357; or to compel payment of a legacy charged on a particular fund, for which both are individually liable as devisees, Evans *v.* Evans, 8 C. E. Gr. 71; or for an accounting by a co-executor for assets received by him, Matter of Rumsey, 18

N. Y. Supp. 402; or for transactions between themselves relating to the estate, Huff *v.* Thrash, 85 Va. 546; or for commissions allowed to them both and received and appropriated by the co-executor, Kennedy *v.* Gruell, 84 Ind. 133; or for an accounting by a co-executor who has reeeived assets without qualifying as executor, Marsh *v.* Oliver, 1 McCart. 259; or by a foreign executor of the deceased co-executor, Price *v.* Brown, 60 How. Pr. 511; or by a co-executor who has been removed. Foster *v.* Foster, 134 Mass. 120. So also, the Court of Chancery will settle conflicting claims between two estates having a common administrator. Griffin *v.* Pringle, 56 Ala. 486. But equity has no jurisdiction to compel one executor to join his co-executor in an application for leave to sell real estate to pay debts. Southwick *v.* Morrell, 121 Mass. 520.

Parties—Co-executors—Representative capacity. In a bill in equity against an executor for a breach of trust the co-executor is a necessary party where the answer of the defendant alleges that the acts complained of were the acts of both. Bregaw *v.* Claw, 4 Johns. Ch. 116. But, in general, executors residing abroad, or executors who have never acted, are not necessary parties to a suit for discovery and account. Clifton *v.* Haig, 4 Desaus. 329.

So, in a suit against a surviving executor for a legacy it is not necessary to make the representatives of a deceased co-executor parties when it is charged that all the assets are in the hands of the survivor, Goble *v.* Andruss, 1 Gr. Ch. 66; nor in a bill for settlement and distribution. De Hart *v.* De Hart, 2 Gr. Ch. 471. But a legatee may sue the surviving executors and the executor of a deceased executor for an accounting and payment of the balance of a legacy, the collection and recovery being in the first instance against the survivor. Remington *v.* Walker, 99 N. Y. 626.

Where the executor's or administrator's liability as such is sufficiently set out in the bill, it will cure any failure to designate him as such in the process, Johnson *v.* Waters, 111 U. S. 640; or in the prayer for process in the bill. Plant *v.* Plant, 17 Stew. (N. J.) 18.

Joinder of parties. In a suit for the recovery of a *donatio causa mortis* the executor is the only necessary defendant. Melick *v.* Melick, 2 C. E. Gr. 156. So, an heir is a proper, but not a necessary, party to a suit for a breach of trust committed by a deceased executor, the surviving executors and the administrator of the deceased executor and his heirs being made parties defendant. McCartin *v.* Traphagen, 16 Stew. (N. J.) 323. But where a residuary legatee sues for the settlement and distribution of the estate, he must make all the residuary legatees or their representatives parties to the proceeding, although the representatives of a deceased co-executor are not necessary parties in such suit against the surviving executor. De Hart *v.* De Hart, 2 Gr. Ch. 471. Where the proceeding is for an accounting and final distribution, all the persons interested should be made parties with the administrator, Deegan *v.* Capner, 17 Stew. (N. J.) 339; Peyser *v.* Wendt, 87 N. Y. 322; Teague *v.* Corbitt, 57 Ala. 529; Woodyard *v.* Buffington, 23 W. Va. 195; Troup *v.* Rice, 55 Miss. 278; Gould *v.* Hayes, 19 Ala. 438; Picot *v.* Bates, 39 Mo. 292; Van Mater *v.* Sickler, 1 Stockt. 483; and the court may make the heirs and next of kin parties to an equitable proceeding for account of assets and payment of debts and to compel an accounting. Warden *v.* McKinnon, 94 N. C. 378. So, in a bill in equity against an administrator for discovery and distribution by a creditor all other creditors are entitled to notice thereof to come in and

share in the proceeds, Thompson *v.* Brown, 4 Johns. Ch. 619; and the decree will be binding on the parties only, and not on other creditors generally. Clyburn *v.* Reynolds, 31 S. C. 91. When sued in equity, it is an executor's duty to make the remaindermen parties, by cross-bill or otherwise, in a suit by a widow for a legacy in which she has a life interest. Lee *v.* Chisholm, 56 Ga. 126. And where a bill is filed in equity against an executor by creditors or legatees, and collusion between him and debtors of the estate is charged, it is proper to make the debtors parties with the executor. Evans *v.* Evans, 8 C. E. Gr. 71; Miner *v.* Aylesworth, 18 Fed. Rep. 199; Sullivan *v.* Lawler, 72 Ala. 72. Generally, however, a legatee should sue the executor alone for his legacy, and not join as parties the debtors to the estate; but if there be collusion between the executor and debtors, or if the executor be insolvent, a debtor may be made a party and recovery had against him. Dorsheimer *v.* Rorback, 8 C. E. Gr. 46, affd. 10 C. E. Gr. 516. In an action against an executor, who is also a guardian and trustee, for account and settlement, and for payment of a bond given to the testator in trust for the plaintiff and others, and for distribution of the proceeds of the bond, the obligor is a necessary party, as is also the administrator of a deceased *cestui que trust* on his application to that effect. Oliver *v.* Wiley, 75 N. C. 320.

It is error to join sureties as substantial parties to a bill against the representatives of a deceased administrator which is grounded on an alleged devastavit, Rorback *v.* Dorsheimer, 10 C. E. Gr. 516; but it is proper to join as defendants the several administrators and their sureties in a bill to settle an estate in which there have been several consecutive administrations, Johnson *v.* Molsbee, 5 Lea 444; and where a bill seeks to recover a legacy from an executor and his sureties, the executor and sureties and the other legatees are all necessary parties, Morris *v.* Morris, 58 Ala. 443; but not a co-surety who had been discharged in bankruptcy. Millsap *v.* Stanley, 50 Ala. 319.

Statute of Limitations—Accounting. The statute does not apply to an equitable action to enforce an express trust, Gordon *v.* Small, 53 Md. 550; such as an action for a legacy, Hedges *v.* Norris, 5 Stew. (N. J.) 192; King *v.* Berry, 2 Gr. Ch. 44; Irby *v.* McCrea, 4 Desaus. 422; if there is no adequate remedy at law, Wisner *v.* Barnet, 4 Wash. C. C. 631; but not where an action at law is maintainable, Souzer *v.* De Meyer, 2 Paige 574; Kane *v.* Bloodgood, 7 Johns. Ch. 90; nor to an action for a distributive share. Frey *v.* Demarest, 1 C. E. Gr. 236. But after the lapse of a long period (beyond twenty years) a court of equity will give effect to the presumption of payment in a suit for a legacy, Peacock *v.* Newbold, 3 Gr. Ch. 61; but such presumption may be rebutted by other evidence. Arden *v.* Arden, 1 Johns. Ch. 313. So, the statute will not run against an action for an accounting (although sixteen years have elapsed since the intermediate account was filed), Montgomery *v.* Cloud, 27 S. C. 188; or where the administrator has rendered no final account and has removed from the state, McGehee *v.* McGehee, 41 La. An. 657; or against the executor of a deceased administrator, Lafferty *v.* Turley, 3 Sneed 157; nor to an action by a remainderman for an accounting by the executor of a life tenant, Anderson *v.* Northrop, 30 Fla. 612; nor against an executor for having turned over trust moneys to the guardian of the life tenant in disregard of the directions of the will that he should invest them. Peacock *v.* Harris, 85 N. C. 146.

Equity will not, however, entertain stale claims for an accounting, Martin

v. Campbell, 35 Ark. 137; or for distribution after final accounting (although the distributee was ignorant of the situation and of his rights), Biays *v.* Roberts, 68 Md. 510; or to open a settlement and falsify the account or surcharge the accountant after three years, Carver *v.* Lewis, 104 Ind. 438; eight years, Barrow *v.* Barrow, 38 La. An. 645; ten years, Bland *v.* Stewart, 35 W. Va. 518; eleven years, McGaughey *v.* Brown, 46 Ark. 25; twelve years, Alvis *v.* Oglesby, 87 Tenn. 172; sixteen years, Gibboney *v.* Kent, 82 Va. 38; nineteen years, Hudson *v.* Hudson, 3 Rand. 117; twenty or thirty years. Skinner *v.* Skinner, 1 J. J. Marsh. 594. The statute begins to run against an application for review of an account only from discovery of fraud, in Pennsylvania. Estate of Duffy, 13 Phila. 216. So, after the lapse of more than twenty years, equity will not call an administrator to account to distributees for funds retained to meet payments due on land and deferred for defects in the title to be corrected. Castleman *v.* Dorsey, 78 Va. 342.

But where the distributee has been under disability as an infant, the lapse of time will not bar the application to open the account. Sorrels *v.* Trantham, 48 Ark. 386. So, where the distributee had died before arriving at maturity and no administrator had been appointed for his estate. Hanf *v.* Whittington, 42 Ark. 491.

So, equity will not enforce a judgment after the expiration of the statutory lien. Werdenbaugh *v.* Reid, 20 W. Va. 588. But by statute, in Massachusetts, equity may enforce a barred debt, if there is no "culpable negligence," but delay is culpable negligence if there is no fraud or mistake. Waltham Bank *v.* Wright, 8 Allen 121.

Fraudulent breach of trust. In general, no lapse of time will bar an action between *cestui que trust* and trustee on a direct trust or for a fraud on the part of the trustee, Picot *v.* Bates, 39 Mo. 292; such as a resulting trust in favor of the widow in lands of the deceased husband, Ross *v.* Hendrix, 110 N. C. 403; or in favor of creditors against a collusive purchaser for the administrator at his own sale, Mathews *v.* Mathews, 66 Miss. 239; or for personal property held in trust by the decedent and kept separate in the hands of his executor. Trecothick *v.* Austin, 4 Mason 16. So, of a bill to set aside a fraudulent conveyance in behalf of a judgment creditor. Kent *v.* Kent, 62 N. Y. 560. Such a bill is, however, barred, in California, in three years after recovery of the judgment at law. Ohm *v.* Superior Court, 85 Cal. 545. So, the Statute of Limitations does not run against a suit for a breach of trust until after discovery of the fraud, Piatt *v.* Longworth, 27 O. St. 159; or after the finding of the trustee, where he changed his residence to another state and concealed his whereabouts, Butler *v.* Lawson, 72 Mo. 227; or after its discovery, on a claim fraudulently concealed by the decedent. Sugar River Bank *v.* Fairbank, 49 N. H. 139.

But an administrator will be discharged from liability for a trust fund where no claim has been presented for more than twenty years after final account, Bobbitt *v.* Jones, 107 N. C. 658; and the identity of the trust property is lost, Johnson *v.* Ames, 11 Pick. 172; or where the *cestui que trust* is put by statute on the footing of a general creditor, Fowler *v.* True, 76 Me. 43; or where an attempt is made after twenty years to fasten the trust on lands purchased by the administrator with the trust funds. Bess *v.* Bess, 88 Ala. 408. So, the statute runs from the discharge of the administrator, against an action for fraud on his part in selling lands of the estate, McGauley *v.* Brown, 46 Ark. 25; or for fraudulent misstatements in

his account. Ariail *v.* Ariail, 29 S. C. 84.

Stay laws. In some states the statutes staying actions against executors and administrators do not apply to suits in equity, such as a bill for accounting, Stone *v.* Corcoran, 17 R. I. 759; or for an injunction against payment of a legacy, Womack *v.* Greenwood, 6 Ga. 299; or to set aside a conveyance to the decedent in consideration of a fraudulent transfer by him, Alabama State Bank *v.* Glass, 82 Ala. 279; although the Alabama statute does apply to suits in equity against an executor or administrator "as such." But the stay law has been held to apply to an equitable action against an administrator, Butts *v.* Genung, 5 Paige 254; *e. g.*, to enforce a specific bequest of testator's business, Carroll *v.* Richardson, 87 Ala. 605; or to an equitable action to set aside a fraudulent conveyance of the decedent as against the personal representative of the deceased grantee. Rosenthal *v.* Enevoldsen, 61 Miss. 532.

Where the statute applies, the lapse of the statutory time need not be expressly averred in the bill of complaint. Allen *v.* Royster, 104 N. C. 278. But where the executor objects to the suit as brought prematurely, his defense is in the nature of a dilatory plea; and the court should not dismiss the bill, but should order the bill to stand over on payment of costs until the proper time for the hearing. Daniel *v.* Lehre, 2 Strobh. Eq. 83.

*CHAPTER THE THIRD.

OF REMEDIES AGAINST EXECUTORS AND ADMINISTRATORS IN THE PROBATE DIVISION OF THE HIGH COURT OF JUSTICE.†

An executor, upon taking probate, as well as an administrator on taking out letters of administration, makes oath that he will (amongst other things) render a true and just account of the estate and effects of the deceased whenever required by law so to do (*a*). An administrator under the Court of Probate Act, 1857 (*b*), must also give a bond conditioned (*inter alia*) to make a "just and true account" of his administration whenever required by law so to do (*c*).

An executor or administrator may be compelled to exhibit an inventory, and render an account of his administration of the personal estate of his testator or intestate in the Probate Division at the instance of a legatee or next of kin, or of a creditor (*d*); but neither an executor nor administrator can be cited by the Probate Division *ex officio* to account (*e*).

The subject of the making of an inventory by an executor or administrator, together with the various questions relating thereto, *e.g.*, the form and contents of the inventory (*f*), the *cases in which, and the persons from whom, the court will compel the exhibiting of an inventory (*g*), and the effect of lapse of time in exhibiting the inventory (*h*), has been discussed in an earlier part of this treatise.

† See American note at end of this chapter.

(*a*) For forms of executors' and administrators' oaths, see Tristram and Coote's Probate Practice, 10th ed., pp. 689, 700 *et seq.*

(*b*) Section 81. *Ante*, p.*454.

(*c*) For form of administration bond, see Tristram and Coote's Probate Practice, 10th ed., p. 673.

(*d*) This jurisdiction was preserved to the Court of Probate by section 23 of the Court of Probate Act, 1857. See *ante*, p.*238.

(*e*) In the case of Bouverie *v.* Maxwell, L. R. 1 P. & D. 272, it was decided that the Court of Probate had no jurisdiction to compel administrators who had taken out administration in an Ecclesiastical Court to file inventories and accounts in the Registry of the Court, as such inventories and accounts were by virtue of the 87th section of the Probate Act returnable only into the Court of Chancery. See *ante*, p.*457.

(*f*) *Ante*, p.*846.

(*g*) *Ante*, pp.*841,*845.

(*h*) *Ante*, p.*844.

[*1950] [*1951]

The order of the court requiring the executor or administrator to bring in an inventory and account is obtained according to the present practice by summons (*i*).

Whether the Probate Division can entertain objections made by a legatee or creditor against the inventory exhibited by the accountant, is a question on which the decisions of the Court of Queen's Bench and the practice of the Prerogative Court of Canterbury, were at variance: The principal authorities on the point have been collected in an earlier part of this treatise (*k*).

The executor or administrator shall be allowed, in the Probate Division, all his reasonable expenses, as well in lawsuits as for other honest purposes: and this reasonableness of expenses is to be such, that he may receive thereby neither profit nor loss (*l*). And therefore he shall be allowed his expenses in secular courts over and above such costs as were allowed there (*m*). It should seem that the decisions which have been elsewhere pointed out (*n*), respecting the accounts and allowances of executors or administrators in equity, would be regarded as authorities in those matters in the Probate Division also.

After the investigation of the account, if the court finds it true and perfect, it shall pronounce for its validity; and in case all parties interested have been cited, such sentence shall be final, and the executor or administrator shall be subject to no further suit (*o*).

With respect to legatees and next of kin, they might formerly proceed against the executor or administrator in the *Ecclesiastical Court to recover their legacies, or distributive shares under the statute (*p*).

Suit for a legacy.

Indeed, in respect of legacies the cognizance of them in former times belonged exclusively to the Ecclesiastical jurisdiction; the Court of Chancery, till Lord Nottingham extended the system of equitable jurisprudence, administered no relief to legatees (*q*).

But it is provided by the Court of Probate Act (20 & 21 Vict. c. 77, s. 23), that the Court of Probate, to which the jurisdiction of the Ecclesiastical Courts has been transferred, shall entertain no suit for legacies (*r*).

20 & 21 Vict. c. 77, s. 23: no suits for legacies to be entertained by the Court of Probate.

(*i*) See Tristram and Coote's Probate Practice, 10th ed., p. 342.

(*k*) *Ante*, pp.*847,*848.

(*l*) 4 Burn, E. L. 489, 8th edit.

(*m*) *Ibid.*

(*n*) *Ante*, p.*1759 *et seq.*

(*o*) 4 Burn, E. L. 487, 8th edit.

(*p*) Glen *v.* Webster, 2 Cas. temp. Lee, 31.

(*q*) Deeks *v.* Strutt, 5 T. R. 692.

(*r*) See *ante*, pp.*238,*239.

Suits by next of kin for a distribution.

According to the Statute of Distributions, the Ecclesiastical Court had authority to enforce the distribution of an intestate's effects: And as the Act of Parliament contains no negative words, equity had, in this matter also, a concurrent jurisdiction with the Ordinary (*s*).

20 & 21 Vict. c. 77, s. 23: no suits for distribution of residues to be entertained by the Court of Probate.

But it is provided by the Court of Probate Act (20 & 21 Vict. c. 77, s. 23) that the Court of Probate, to which the jurisdiction of the Ecclesiastical Court was transferred, shall entertain no suits for the distribution of residue (*t*).

Now by the Judicature Acts, the jurisdiction of the Court of Probate has been transferred to the Probate Division of the High Court of Justice (*u*).

Proctor's fees.

The Ecclesiastical Court could not entertain a suit for proctor's fees; since they are a temporal duty, for which an action may be maintained in the Temporal Courts (*x*).

Injunctions: Receivers.

The Probate Division, in common with the other divisions of the High Court of Justice, has power to grant injunctions and to appoint receivers by virtue of sect. 25 (sub-s. 8) of the *Judicature Act, 1873, by which it is provided that "A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the Court in all cases in which it shall appear to the Court to be just or convenient that such order should be made: and any such order may be made either unconditionally or upon such terms and conditions as the Court shall think just: and if an injunction is asked either before or at or after the hearing of any cause or matter to prevent any threatened or apprehended waste or trespass, such injunction may be granted if the Court shall think fit, whether the person against whom such injunction is sought is, or is not, in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any color of title: and whether the estates claimed by both or by either of the parties are legal or equitable."

Injunction by executor against a co-executor before probate.

In a case where an executor had before probate, and without the assent of his co-executor, intermeddled in the estate and made preparations to dispose of a portion of it, the court gave leave to the co-executor to issue a writ against

(*s*) Matthews *v.* Newby, 1 Vern. 133. Fonbl. Treat. Eq. B. 4, Pt. 2, Ch. 3, s. 2, note (*d*).

(*t*) See *ante*, pp.*238,*239.

(*u*) See *ante*, p.*240.

(*x*) Pollard *v.* Gerard, 1 Lord Raym. 703. Johnson *v.* Oxenden, 4 Mod. 255. Toller, 496.

him, claiming an injunction to restrain him from dealing with the estate before probate, and praying for the appointment of a receiver (*y*).

(*y*) In the goods of Moore, 13 P. D. 36. The court in this case followed the case of Re Parker, 54 L. J. Ch. 694, in which it was decided that by sect. 25 (sub-s. 8) of the Judicature Act, 1873, any judge of the High Court is enabled to appoint a receiver of a deceased's estate (before grant of probate or administration) notwithstanding the absence of *lis pendens:* but that applications for any such order being on the way to probate proceedings are properly made in the Probate Division, and if made elsewhere will not be encouraged.

---

† *Courts of probate.* It has been the general policy throughout the United States to vest large and often exclusive powers in the Probate Courts over the management and settlement of the estates of deceased persons. These powers have been already fully considered in their appropriate place in earlier parts of this work. In general, these courts possess exclusive jurisdiction in the probate of wills and the granting of letters of administration. These and other powers are governed by minute local statutes, an examination of which is hardly within the scope of this work.

Jurisdiction—Accounting. The Probate Court is the proper tribunal to settle the accounts of executors and administrators, Brush *v.* Button, 36 Conn. 292; Ballard *v.* Kilpatrick, 71 N. C. 281; to the exclusion, in general, of chancery. Garnett *v.* Carson, 11 Mo. Ap. 290. It is only when some special reason exists that chancery will assume the settlement of an estate, Weakley *v.* Gurley, 60 Ala. 399; nor will it interfere otherwise with such settlement, Johnson *v.* Holliday, 68 Ga. 81; especially is this true when the estate is insolvent, Bird *v.* Bird, 77 Me. 499; Strackelford *v.* Bankhead, 72 Ala. 476; or when the proceeding for settlement has been already commenced in the Probate Court. Park *v.* Park, 36 Ala. 132. Some extraordinary case must be presented to call for equitable interference by removal of accounting into chancery. Newsom *v.* Thornton, 66 Ala. 311. See American note, p. 655, *ubi supra.* The Probate Court may correct by final decree errors in former partial settlements, Mix's Appeal, 35 Conn. 121; and cannot preclude itself from so doing by its decision on an intermediate account. Field *v.* Hitchcock, 14 Pick. 405. And a former administrator may be called upon by his successor to show cause why his account should not be opened and corrected upon the ground of fraud and mistake. Engle *v.* Crombie, 4 Harr. (N. J.) 83. But the jurisdiction of the Probate Court is strictly limited by statute and cannot be extended, *e. g.*, to cite one executor to account at the instance of his co-executor. Ludlow *v.* Ludlow, 1 South. 189.

Actions for legacies or distribution. The Probate Court has jurisdiction in many states of actions for legacies. Bell *v.* King, 70 N. C. 330; Bidwell *v.* King, 71 N. C. 287; *New Jersey* (Rev. 788, § 165). The assent of an executor to a residuary legacy and his part payment of it will not deprive the court of its jurisdiction, Hendrick *v.* Mayfield, 74 N. C. 626; and a suit for a residu-

ary legacy is properly brought in the Probate Court, for the amount is uncertain until account is had. Hendrick *v.* Mayfield, *ubi supra.* But in New York, an action for a legacy cannot be brought before the surrogate until after settlement of the final account, Riggs *v.* Cragg, 89 N. Y. 479; and the surrogate has no jurisdiction where the validity of the legatee's claim is disputed. Fiester *v.* Shepard, 92 N. Y. 251; and see Redf. Surr. Pr. 613.

Incidental to the jurisdiction over actions for legacies is the power to apply lands to the payment of legacies, Norris *v.* Farrell, 11 Phila. 271; and at suit of a legatee to compel the surrender of assets unlawfully pledged by an executor, Estate of Marshall, 138 Pa. St. 285; and to try the validity of a gift *inter vivos* at the suit of a legatee, McWillie *v.* Van Vacter, 35 Miss. 428; and in New York, to establish the claims of legatees by setting aside a codicil revoking the legacies. Booth *v.* Kitchen, 7 Hun 255. But in the absence of a statutory authority the Probate Court has no power to decree to whom and at what time a legacy is to be paid, Cowdin *v.* Perry, 11 Pick. 503; nor to decide upon the validity of a gift by the decedent to his wife. Richardson *v.* Root, 19 Hun 473. In Pennsylvania, even after an administrator's account is settled in the Probate Court, there can be no action at law for a distributive share of the estate, Ashford *v.* Ewing, 25 Pa. St. 213; but in California, after a decree of distribution the Probate Court has no jurisdiction of suits of distributees for their shares, Wheeler *v.* Bolton, 54 Cal. 302; except to compel the delivery thereof. Id.

Jurisdiction as to debts and claims. In some states the Probate Court has jurisdiction over the claims of creditors, *e. g.*, to direct the payment of a judgment against the estate, where the validity of the judgment is not questioned, McNulty *v.* Hind, 11 Hun 339; or to determine its validity on the accounting, Matter of Radde, 2 Connoly 293; or to determine the liability of the estate to creditors, Lamon *v.* Hackett, 49 Wis. 261; and to enforce the payment of claims, Aldrich *v.* Annin, 54 Mich. 230; concurrently with other courts, Phillips *v.* Alleghany Valley Railroad, 107 Pa. St. 465; and to entertain a creditor's bill for that purpose, making all creditors parties. Ballard *v.* Kilpatrick, 71 N. C. 281. In Missouri, the Probate Court has exclusive jurisdiction of the settlement of the partnership affairs of a deceased partner, Morris *v.* Murphy, 36 Mo. Ap. 36; but the surrogate cannot, in New York, enforce a partnership debt due to one of its creditors by sale of the land of the deceased partner. Bennett *v.* Crain, 41 Hun 183.

But in other states the Probate Court has no jurisdiction to determine the validity of claims against the estate on an application to sell lands, Smith *v.* Smith, 12 C. E. Gr. 445; nor to order payment of claims created by the executor, Bulkley *v.* Staats, 4 Redf. 524; nor to determine claims against executors or administrators in their individual capacity, Estate of Robinson, 12 Phila. 170; nor to pronounce judgment against a former executor for a debt due to the testator during his lifetime. McManus *v.* McDowell, 11 Mo. Ap. 436.

Construction of will. Probate courts have no general power to construe wills, Fiester *v.* Shepard, 92 N. Y. 251; see also Hillis *v.* Hillis, 16 Hun 76; even by the consent and request of all parties interested. Estate of Smith, 41 N. Y. S. R. 337. But where the construction of a will becomes necessary to the exercise of its ordinary jurisdiction, a probate court will construe it, Tappan *v.* Methodist Episcopal Church, 3 Dem. 187; Chipman *v.* Montgomery, 63 N.

Y. 221; *e. g.*, in a proceeding to revoke letters testamentary, Estate of Fernbacher, 8 Civ. Pro. 308; or to settle accounts of executors, Riggs *v.* Cragg, 26 Hun 89; or to determine whether maintenance of the children was within the direction of the will. Perry *v.* Field, 40 Ark. 175.

Miscellaneous powers. The Probate Court may grant relief to an administrator against a bailee of property of the estate unlawfully withheld, McNeil *v.* McNeil, 36 Ala. 109; or require a banker to disclose a bank deposit, Wilson *v.* Leishman, 12 Met. 316; or entertain proceedings for the recovery of property unlawfully withheld, Estate of Smith, 17 Abb. N. C. 78; Matter of Nickerson, 2 Connoly 6; or even, in Massachusetts, concurrently with courts of equity, decree specific performance against an administrator of a contract for the sale of land, Leuchterhand *v.* Sears, 108 Mass. 552; although this is a matter of exclusive equity jurisdiction in other states. Skillman *v.* Skillman, 2 McCart. 388.

But the Probate Court has no jurisdiction of matters of purely equitable cognizance, though connected with administration of the estate, such as proceedings to follow trust funds into the hands of the administrator of the deceased trustee. Butler *v.* Lawson, 72 Mo. 227. The Probate Court has no jurisdiction to enforce a vendor's lien upon lands of the deceased sold by the administrator, Ross *v.* Julian, 70 Mo. 209; or to enforce the election made by the widow in lieu of dower, Carter's Appeal, 59 Conn. 576; or to determine the executor's liability for mismanagement, Skillman *v.* Skillman, 2 McCart. 388; or to determine a distributee's indebtedness to the estate, Ford *v.* Talmage, 36 Mo. Ap. 65; or to decide conflicting claims of the heirs and the residuary devisee, Hillis *v.* Hillis, 16 Hun 76; or to compel the administrator to pay over rents collected by him, and to surrender possession of premises held by him, Crow *v.* Day, 69 Wis. 637; or on a contested probate, to determine whether mutual wills constitute a binding contract between a husband and wife. Lansing *v.* Haynes, 95 Mich. 16.

Like other courts of record, the Probate Court may enforce its decrees by attachment for contempt, Marshall *v.* Hitchcock, 3 Redf. 461; Davis *v.* Harper, 54 Ga. 180; but cannot issue such process against the husband of an administratrix for her failure to obey the decree of the court. Johnson *v.* Von Kettler, 66 Ill. 63. And it seems that an order for the payment of a balance in hand by an administrator who has been discharged to his successor is not such a specific decree as will be enforced by attachment for contempt. Matter of Bingham, 32 Vt. 329.

*CHAPTER THE FOURTH.

OF EQUITABLE REMEDIES AGAINST EXECUTORS AND ADMINISTRATORS IN THE COUNTY COURT.

Jurisdiction of the County Court in equity.

By stat. 51 & 52 Vict. c. 43, s. 67, it is enacted that the County Courts shall have and exercise all the powers and authority of the High Court in the actions or matters hereinafter mentioned; (that is to say,)

1. By creditors, legatees (whether specific, pecuniary, or residuary), devisees (whether in trust or otherwise), heirs-at-law, or next of kin, in which the personal or real or personal and real estate against or for an account or administration of which the demand may be made shall not exceed in amount or value the sum of five hundred pounds.

5. Under the Trustees Relief Acts, or under the Trustee Acts, or under any of such acts, in which the trust estate or fund to which the action or matter relates shall not exceed in amount or value the sum of five hundred pounds.

The section having enumerated other actions and matters proceeds: "In all such actions or matters the Judge shall, in addition to the powers and authorities possessed by him, have all the powers and authorities, for the purposes of this Act, of a Judge of the Chancery Division of the High Court; and the treasurer, registrar, and high bailiff respectively shall in all such actions or matters discharge any duties which an officer of the said division can discharge, either under the order of a Judge of the said division, or under the practice thereof, and all officers of the Courts shall, in discharging such duties, *conform to any rules or orders made in that behalf under this Act."

Where amount of subject-matter of suit exceeds the limit of the jurisdiction of County Court, suit may be remitted to Court of Chancery, &c.

By sect. 68, "If during the progress of any action or matter under the last preceding section it shall be made to appear to the Judge that the subject-matter exceeds the limit in point of amount to which the jurisdiction of the Court is therein limited, it shall not affect the validity of any order already made, but it shall be the duty of the Judge to direct the action or matter to be transferred

to the Chancery Division of the High Court; and the whole of the procedure in the said action or matter when so transferred shall be regulated by the Rules of the Supreme Court: Provided always, that it shall be lawful for any party to apply to a Judge of the said division at Chambers for an order authorizing and directing the action or matter to be carried on and prosecuted in the County Court, notwithstanding such excess in the amount of the limit to which equitable jurisdiction is given by the said section; and the Judge, if he shall deem it right to summon the other parties, or any of them, to appear before him for that purpose, after hearing such parties, or on default of the appearance of all or any of them, shall have full power to make such order."

Transfer to County Courts of equitable actions or matters.

By sect. 69, "Where any action or matter is pending in the Chancery Division of the High Court which might have been commenced in a Court under this Act, it shall be lawful for any of the parties thereto to apply at Chambers to the Judge of the said division to whom the said action or matter is attached to have the same transferred to the Court or one of the Courts in which the same might have been commenced, and such Judge shall have power upon such application, or without such application, if he shall think fit, to make an order for such transfer, and thereupon such action or matter shall be carried on in the Court to which the same shall be ordered to be transferred, and the parties thereto shall have the same right of appeal as they would have had if the action or matter had been commenced in such Court."

Trustees may pay trust moneys or transfer stock and securities into County Court.

By sect. 70, "Any moneys, annuities, stocks, or securities *vested in any persons as trustees, executors, administrators, or otherwise, upon trusts within the meaning of the Trustees Relief Acts, where the same do not exceed in amount or value the sum of five hundred pounds, upon the filing by such trustees or other persons, or the major part of them, with the registrar of the Court within the district of which such persons or any of them shall reside, of an affidavit shortly describing according to the best of their knowledge, the instrument creating the trust, may, in the case of money, be paid into a post-office savings bank established in the town in which the Court is held, in the name of the registrar of such Court, in trust to attend the orders of the Court, and upon such persons filing with the registrar the receipt or other document given to them by the officer of the said bank, the

[*1956]

registrar shall record the same, and give to them an acknowledgment in such form as may be prescribed, which acknowledgment shall be a sufficient discharge to such persons for the money so paid, and, in the case of stocks or securities, may be transferred or deposited into or in the names of the treasurer and registrars of such Court, in trust to attend the orders of the Court, and the certificate of the proper officer of the transfer or deposit of such stocks or securities shall be a sufficient discharge to such persons for the stocks or securities so transferred or deposited: and for the above purposes all the powers and authorities of the High Court shall be possessed and exercised by the Courts, and any order made by virtue of such powers and authorities shall fully protect and indemnify all persons acting under or in pursuance of such order."

Where action may be commenced.

By sect. 74, "Except where by this Act it is otherwise provided, every action or matter may be commenced in the Court within the district of which the defendant or one of the defendants shall dwell or carry on his business at the time of commencing the action or matter, or it may be commenced, by leave of the Judge or registrar, in the Court within the district of which the defendant or one of the defendants dwelt or carried on business, at any time within six calendar months *next before the time of commencement, or, with the like leave, in the Court in the district of which the cause of action or claim wholly or in part arose."

In what courts proceedings in equity shall be taken.

By sect 75, "The provisions of the next preceding section shall not apply to any of the following proceedings; but

"(2) Proceedings under the Trustee Acts, 1850 and 1852, shall be taken in the Court within the district of which the persons making the application, or any of them, reside or resides:

"(3) Proceedings for the administration of the assets of a deceased person shall be taken in the Court within the district of which the deceased person had his last place of abode in England, or in which the executors or administrators, or any one of them, shall have their or his place of abode:

"Provided that if during the progress of any such proceedings it shall be made to appear to the Court that the same could be more conveniently heard in some other Court, it shall be competent for the Court to transfer the same to such other Court, and thereupon the proceeding shall be taken in such other Court."

[*1957]

By County Court Rules, 1889, Ord. VI. r. 6, "Where any person entitled to bring or maintain an action for the administration of the estate of any deceased person or the execution of any trust desires to submit for the determination of the Court any of the following questions or matters:

In action for administration plaintiff may ask that only a certain question may be decided.

"(a) Any question affecting the rights or interests of any person claiming to be creditor, devisee, legatee, next of kin, or heir-at-law, or *cestui que trust:*

"(b) The ascertainment of any class of creditors, legatees, devisees, next of kin, or others:

"(c) The furnishing of any particular accounts by the executors or administrators or trustees, and the vouching (when necessary) of such accounts:

"(d) The payment into Court of any money in the hands of the executors or administrators or trustees:

"(e) Directing the executors or administrators or trus*tees to do or to abstain from doing any particular act in their character as such executors or administrators or trustees:

"(f) The approval of any sale, purchase, compromise, or other transaction:

"(g) The determination of any question arising in the administration of the estate or trust:

he shall in his particulars specify concisely the question or matter upon which the decision of the Court is required: and that he is willing to renounce his right to an order for a general administration of the estate or trust."

Such question may be determined without general administration, under Ord. XXII. r. 11.

Partial administration.

By Ord. XXII. r. 12, "In any action or matter in which an injunction has been, or might have been claimed, the plaintiff may, before or after judgment, apply for an injunction to restrain the defendant or respondent from the repetition or continuance of the wrongful act or breach of contract complained of, or from the commission of any wrongful act or breach of contract of a like kind relating to the same property or right, or arising out of the same contract; and the judge may, in addition to giving judgment for such damages and costs as the plaintiff may be entitled to, grant the injunction, either upon or without terms, as may be just."

Injunction.

[*1958]

Parties aggrieved may appeal.

By sect. 120, "If any party in any action or matter shall be dissatisfied with the determination or direction of the Judge in point of law or equity, or upon the admission or rejection of any evidence, the party aggrieved by the judgment, direction, decision, or order of the Judge may appeal from the same to the High Court, in such manner and subject to such conditions as may be for the time being provided by the Rules of the Supreme Court regulating the procedure on appeals from inferior Courts to the High Court" (*a*).

For the orders and rules made for the County Courts, and the procedure therein, the reader is referred to the Annual County Courts Practice.

(*a*) See R. S. C. 1883, Ord. LIX. rr. 10 to 17.

ADDENDA AND CORRIGENDA.

[References to English [*] Paging.]

PAGE

54, n. (*f*).—The will of a married woman who dies in the lifetime of her husband made during coverture and prior to the Married Women's Property Act, 1882, she having at the time capacity to make a will, is effectual without re-execution to pass separate property which she may acquire under the provisions of the Act. Re Bowen (1892), 2 Ch. 291.

67, n. (*u*).—The whole of a disposing portion of a will was written on the first side of a sheet of foolscap, the second and third sides being blank; and the attestation clause with the signature of the testator and the witnessess being on the fourth side. It was held that the will was duly executed. In the goods of Fuller (1892), P. 377.

79, n. (*y*).—See also Wyatt *v.* Berry (1893), P. 5.

87, n. (*c*).—See also In the goods of Merchant (1893), P. 254. In that case a testatrix left two testamentary documents of which only one was duly executed. The first or unexecuted document made various specific bequests and appointed an executor. The second, which was duly executed, bequeathed all the property of the testatrix to her nephew "for the purposes I require him to do absolutely." It was held that the two documents could not be admitted to probate as together constituting the will of the deceased, but that probate might be granted of the second or executed document *with directions to the executor to administer the estate in conformity with the trusts of the first document.*

114, n. (*tt*).—See In the goods of Heath (1892), P. 253, in which a reference in a codicil showed that an interlineation had been made prior to the execution of the codicil, and was therefore incorporated by it.

191, n. (*p*).—Where a testatrix appointed A. and B. "trustees" of her will and expressed her wish that they should pay her funeral and other debts, it was held that they were constituted executors according to the tenor. In the goods of Wilkinson (1892), P. 227. See also In the goods of Russell, *ibid.* 380.

248, n. (*c*).—See also Copeland *v.* Simister (1893), P. 16.

282, n. (*y*).—A party giving notice under this rule cannot be condemned in costs, the power of the Court only existing where the party who gives the notice has taken proceedings to call in the probate. Leigh *v.* Green (1892), P. 17; Beale *v.* Beale (L. R. 3 P. & D. 179) distinguished.

293, n. (*l*).—A testatrix left two wills and a codicil to the first will. The second will which disposed only of a small policy of insurance on her life, was prepared for her on a printed form by one of her executors. The form commenced with a clause revoking all previous testamentary dispositions; but, when this was read over to her, she objected to it, saying that she did not wish to revoke her first will and codicil. The person who prepared the will assured her that, as it only related to the insurance policy, the words of revocation would not apply to her former testamentary dispositions, and that to make an erasure might invalidate the will. Being satisfied by this assurance, the testatrix duly executed the

PAGE

will. It was held, on the authority of Morrell *v.* Morrell, that the testatrix must be taken to have known and approved of these words of revocation, and that they must be included in the probate of the last will. Collins *v.* Elstone (1893), P. 1.

293, n. (*l*).—A testatrix executed a will in 1887, and a subsequent will in 1889, by which she revoked all previous wills. In 1891 she executed a codicil which *by mistake* was described as a codicil to the will of 1887. It was held that probate might be granted of the codicil together with the will of 1889 *with the reference to the will of* 1887 *omitted.* In the goods of Gordon (1892), P. 228. See also In the goods of Moore (1892), P. 378.

312, n. (*d*).—Roe *v.* Nix (1893), P. 55.

315, n. (*x*).—See also Collins *v.* Elstone (1893), P. 1, in which Morrell *v.* Morrell was followed, and the cases of Guardhouse *v.* Blackburn, Atter *v.* Atkinson, and Fulton *v.* Andrew were referred to. See also In the goods of Moore (1892), P. 378.

382, n. (*m*).—Grant of administration to a Receiver appointed by the Chancery Division. In the goods of Moore (1892), P. 145.

384, n. (*s*).—Where an executor before the death of the testator left the country under an assumed name, having sold all his effects, and there was reason to believe that he did not intend to return, the Court, under section 73, granted administration with the will annexed to the testator's widow, who was sole beneficiary, without requiring the executor to be cited. In the goods of Crawshay (1893), P. 108.

384, n. (*s*).—Grant made to a *creditor*, the sole executrix and universal legatee of the testator (his widow) being a lunatic. In the goods of Atherton (1892), P. 104.

385, n. (*s*).—Grant to *Clerk of the Guardians of the Poor.* In the goods of Everley (1892), P. 50.

Joint grant *to next-of-kin and another person entitled in distribution.* In the goods of Walsh (1892), P. 230.

402, n. (*q*).—See In the goods of Alston (1892), P. 142.

403.—Grant of administration with the will annexed to a *stranger*, there being no known relatives of the testator and no residuary legatee appointed. In the goods of Jackson (1892), P. 257.

404, n. (*d*).—Where the sole executrix and legatee had not been heard of for forty years, the Court granted administration with the will annexed to the representative of the next-of-kin of the testatrix on proof that the executrix had been cited by advertisement, subject to administration to the next-of-kin being taken out. In the goods of Ley (1892), P. 6.

441, n. (*c*).—See also In the goods of Wright (1893), P. 21.

456, n. (*h*).—As to breach of condition to well and truly administer under s. 81, see Dobbs *v.* Brain (1892), 2 Q. B. 207.

463, n. (*v*).—In the case of In the goods of De Beaufort (1893), P. 231, an administratrix on application for administration with will annexed was allowed to give an administration bond with *two foreign sureties* where the testator, being a French subject resident in France, made a will constituting a domiciled French subject his universal and residuary legatee.

482, n. (*l*).—Re Cliff's Trusts is further reported in (1892) 2 Ch. 229. In this case the report of L'Fit *v.* L'Batt is corrected.

511.—The incidence of the new duties imposed by s. 27 of this Act, and by s. 5 of the Customs and Inland Revenue Act, 1889 (see *post*, p. 521), is governed by the same principle as that which regulated the incidence of the old probate duty—viz. that it should be borne by the general residuary estate. Re Bourne (1893), 1 Ch. 188; Re Croft (1892), 1 Ch. 652, distinguished.

PAGE

515, *line* 22.—"Person acting in the administration of the estate."

A testator bequeathed certain pictures and other property to be held by trustees as heirlooms. His executors caused a valuation to be made for probate purposes, and delivered to the Commissioners of Inland Revenue an affidavit of value with an account on the basis of such valuation duly stamped in accordance with the provisions of the Customs and Inland Revenue Act, 1881. Upon this a certificate was issued, stating the value as shown by the account, and probate was granted. Some time after the executors had finally wound up the estate, it was discovered that one picture had been omitted from the valuation, and that the others had been considerably undervalued. No suggestion was made of any negligence on the part of the executors or of any incompetence on the part of the valuer. On an information, praying that the executors might be ordered to deliver a further affidavit and account in accordance with the provisions of s. 32, it was held by the Court of Appeal, affirming the decision of the Divisional Court (1892), 2 Q. B. 289, that the executors, having completed the duties of administration, were *not* "persons acting in the administration of the estate" within the meaning of the section, and were not liable. Att.-Gen. *v.* Smith (1892), 2 Q. B. 289, affirmed (1893), 1 Q. B. 239.

582, n. (*y*).—See also Re Clowes (1893), 1 Ch. 214.

588, n. (*x*).—See Re Wilson (1893), 2 Ch. 340, in which case the principle regulating the devolution of land held for a partnership or other common object is discussed.

663, n. (*c*).—In Stevens *v.* Trevor-Garrick (1893), 2 Ch. 307, it was held that the reasons given in Hancock *v.* Hancock, as to the effect of s. 19 on the operation of s. 5 of the Act, were equally applicable to modify the operation of s. 2.

784.—Section 26 of 22 & 23 Vict., c. 35 is repealed by the Trustee Act, 1893 (56 & 57 Vict., c. 53), and is re-enacted by s. 23 of that Act.

815.—Section 37 of the Conveyancing and Law of Property Act, 1881, is repealed by the Trustee Act, 1893 (56 & 57 Vict., c. 53), and is re-enacted by s. 21 of that Act.

826.—Section 38 of the Conveyancing and Law of Property Act, 1881, is repealed by the Trustee Act, 1893 (56 & 57 Vict., c. 53), and is re-enacted by s. 22 of that Act.

923, n. (*o*).—A bequest to a religious institution or for a religious purpose is *primâ facie* a bequest for a "charitable" purpose, and the law applicable to "charitable" bequests as distinguished from the law applicable to ordinary bequests ought to be applied to a bequest to a religious institution or for a religious purpose. Re White (1893), 2 Ch. 41.

963, n. (*p*).—See the late case of In the goods of Ashton (1892), P. 83, in which the cases mentioned in this note are referred to and discussed.

1086, n. (*r*).—The rule that s. 33 of the Wills Act does not apply to children or grandchildren of the testator as a class is not affected by the fact that in the events which happened, the class consisted of but one individual. Re Harvey's Estate (1893), 1 Ch. 567.

1193, n. (*z*).—See also Re Clowes (1893), 1 Ch. 214.

1249, n. (*m*).—Section 3 of the Trust Investment Act, 1889, is repealed by the Trustee Act, 1893 (56 & 57 Vict., c. 53), and is re-enacted by s. 1 of that Act.

1251, n. (*o*).—See also Re Hengler (1893), 1 Ch. 586, in which the principle of Re Chesterfield's Trusts and Beavan *v.* Beavan is applied.

1263.—Section 32 of 36 Geo. III., c. 52, is repealed by the Trustee Act, 1893 (56 & 57 Vict., c. 53). Provisions for the payment into Court by trustees are contained in s. 42 of the latter Act.

PAGE

1266, n. (*z*).—For a case in which a "contrary intention" was expressed, see Re Humphreys (1893), 3 Ch. 1. In this case Re Wells was approved.

1322, n. (*h*).—See Re Davies (1892), 3 Ch. 63.

1392, n. (*y*).—The domicil of a person is that place or country in which his habitation is fixed without any present intention of removing therefrom. Re Craignish (1892), 3 Ch. 180.

1396, n. (*f*).—Where the domicil of birth is changed during infancy by a change of domicil of the father, *semble*, the altered domicil cannot be regarded as the infant's domicil of origin. Re Craignish (1892), 3 Ch. 180.

1600, n. (*k*).—Proceedings by a road authority under s. 23 of the Highways and Locomotives (Amendment) Act, 1878, are in the nature of an action for a personal tort, so that proceedings cannot be taken against the executor of a person by whose orders the extraordinary traffic was conducted. Story *v.* Sheard (1892), 2 Q. B. 515.

1652, n. (*r*).—Re Parkin (1892), 3 Ch. 510, 520.

1695.—Section 37 of the Conveyancing and Law of Property Act, 1881, is repealed by the Trustee Act, 1893 (56 & 57 Vict., c. 53), and is re-enacted by s. 21 of that Act.

1704, n. (*x*).—Section 7 of the Trustee Act, 1888, is repealed by the Trustee Act, 1893 (56 & 57 Vict., c. 53), and is re-enacted by section 18 of that Act with the addition of a sub-section (3), declaring that the section applies to trusts created before or after 1st January, 1894, but that nothing "in this section *shall authorise any trustee to do anything which he is in express terms forbidden to do, or to omit to do anything which he is in express terms directed to do by the instrument creating the trust.*"

1706, n. (*a*).—The Trustee Act, 1893 (56 & 57 Vict., c. 53), repeals the Trustee Act, 1888, except as to ss. 1 and 8. Sections 4 and 5 of the Trustee Act, 1888, are re-enacted verbatim by ss. 8 and 9 of the Act of 1893.

1710-1714.—The Trust Investment Act, 1889, is repealed (with the exception of sections 1 and 7) by the Trustee Act, 1893 (56 & 57 Vict., c. 53). The sections set out in these pages are re-enacted by sections 1 to 4 inclusive, with merely the following additions, viz., in *section* 1 (*j*), power is given to invest in "deferred annuities comprised in the register of holders of annuity Class D., and annuities comprised in the register of annuitants Class C. of the East Indian Railway Company," and in *section* 1 (*k*), power is given to invest in railway stock in India "upon the capital of which the interest is guaranteed by the Secretary of State in Council of India."

1714.—The provisions relating to investments authorised apart from the Trust Investment Act, 1889, here referred to, are repealed by the Trustee Act, 1893, and are re-enacted by s. 5 of that Act. That section, in addition to such enactments, provides that a trustee having power to invest in real securities, unless expressly forbidden by the instrument creating the trust, may invest, and shall be deemed to have always had the power to invest "on mortgage of property held for an unexpired term of not less than 200 years, and not subject to a reservation of rent greater than a shilling a year, or to any right of redemption or to any condition for re-entry except for non-payment of rent." The Trustee Act, 1893, s. 6, gives a trustee power to invest in the purchase or on mortgage of any land, *notwithstanding drainage charges*, unless the terms of the trust expressly provide that the land to be purchased or taken in mortgage shall not be subject to any such prior charge.

By s. 7, trustees, unless authorised by the terms of their trust, are forbidden to apply for or hold *certificates to bearer*, issued under the authority of the India Stock Certificate Act, 1863, the National Debt Act, 1870, the Local Loans Act, 1875, or the Colonial Stock Act, 1877.

PAGE

1725.—Section 2 of the Trustee Act, 1888, is repealed by the Trustee Act, 1893 (56 & 57 Vict., c. 53), and is re-enacted by s. 17 of that Act, with the addition of a sub-section (5), which provides that "nothing in this section shall authorise a trustee to do anything which he is in express terms forbidden to do or to omit anything which he is in express terms directed to do, by the instrument creating the trust."

1735.—Section 31 of Lord St. Leonard's Act (22 & 23 Vict., c. 35) is repealed by the Trustee Act, 1893 (56 & 57 Vict., c. 53), and is re-enacted by s. 24 of that Act.

1740.—Section 6 of the Trustee Act, 1888, is repealed by the Trustee Act, 1893 (56 & 57 Vict., c. 53), and is re-enacted by s. 45 of that Act.

1817, 1820.—The Trustee Act, 1850, is repealed by the Trustee Act, 1893 (56 & 57 Vict., c. 53), except in so far as relates to the Court exercising jurisdiction in Lunacy in Ireland. The effect of the sections of the new Act which take the place of the sections in the repealed Act is given in the table hereafter set out.

1823.—Section 30 of Lord St. Leonard's Act (22 & 23 Vict., c. 35) is repealed by the Trustee Act, 1893 (56 & 57 Vict., c. 53).

1887, 1888.—The Trustee Acts, 1850 and 1852, are repealed and practically re-enacted by the Trustee Act, 1893 (56 & 57 Vict., c. 53). The table hereafter set out shows the provisions of the new Act which take the place of those in the repealed Acts.

1928, *line* 18.—The exception contained in this sub-section was held not to apply, in the absence of fraud, where trust funds advanced on mortgage were with the concurrence of the mortgagor applied in payment of a debt previously charged on the mortgaged property in favor of a bank in which the trustee was a partner. Re Gurney (1893), 1 Ch. 590.

1928, n. (*oo*).—Re Page (1893), 1 Ch. 304.

1938, n. (*y*).—Charles *v.* Jones, explained in Re Beddoe (1893), 1 Ch. 547.

1941, n. (*u*).—See Re Beddoe (1893), 1 Ch. 547, 555.

TRUSTEE ACT, 1893.

This Act, described as "*An Act to consolidate Enactments relating to Trustees,*" repeals the various sections of Statutes mentioned in the Schedule, and re-enacts the repea'ed provisions.

The following table shows the various sections of the Trustee Act which correspond with the repealed sections:—

Sect. 1.	Authorised Investments	52 & 53 Vict., c. 32, s. 3
" 2.	Purchase at a premium of redeemable stocks	—— s. 4.
" 3.	Discretion of trustees	—— s. 5.
" 4.	Application of Act	—— s. 6.
" 5.	Enlargement of express powers of investment	34 & 35 Vict., c. 27; 28 & 29 Vict., c. 78, s. 40; 43 & 44 Vict., c. 8, s. 7; 27 & 28 Vict., c. 114, s. 60; 38 & 39 Vict., c. 83, s. 27.
" 6.	Power to invest notwithstanding drainage charges	10 & 11 Vict., c. 32, s. 53
" 7.	Trustees not to convert inscribed stock into certificates to bearer	26 & 27 Vict., c. 73, s. 4; 33 & 34 Vict., c. 71, s. 29; 38 & 39 Vict., c. 83, s. 21; 40 & 41 Vict., c. 59, s. 12.

Sect. 8.	Loans and investments by trustees not chargeable as breaches of trust	51 & 52 Vict., c. 59, s. 4.
" 9.	Liability for loss by reason of improper investments	51 & 52 Vict., c. 59, s. 5.
" 10.	Power of appointing new trustees . . .	44 & 45 Vict., c. 41, s. 31; 45 & 46 Vict., c. 39, s. 5; 55 & 56 Vict., c. 13, s. 6.
" 11.	Retirement of trustee	44 & 45 Vict., c. 41, s. 32.
" 12.	Vesting of trust property in new or continuing trustees	—— s. 34.
" 13.	Power of trustee to sell by auction . .	—— s. 35.
" 14.	Power to sell subject to depreciatory conditions	51 & 52 Vict., c. 59, s. 3.
" 15.	Power to sell under Stat. 37 & 38 Vict., c. 78	37 & 38 Vict., c. 78, s. 3.
" 16.	Married Woman as bare trustee may convey	—— s. 6.
" 17.	Power to authorise receipt of money by banker or solicitor	51 & 52 Vict., c. 59, s. 2.
" 18.	Power to insure building	—— s. 7.
" 19.	Power of trustees of renewable leaseholds to renew and raise money for the purpose .	—— ss. 10, 11.
" 20.	Power of trustees to give receipts . . .	44 & 45 Vict., c. 41, s. 36.
" 21.	Power of executors and trustees to compound, &c.	—— s. 37.
" 22.	Powers of two or more trustees . . .	—— s. 38.
" 23.	Exoneration of trustees in respect of certain powers of attorney	22 & 23 Vict., c. 35, s. 26.
" 24.	Implied indemnity of trustees . . .	—— s. 31.
" 25.	Power of the Court to appoint new trustees	13 & 14 Vict., c. 60, s. 32; 15 & 16 Vict., c. 55, ss. 8, 9; 46 & 47 Vict., c. 52, s. 147.
" 26.	Vesting orders as to land	13 & 14 Vict., c. 60, ss. 7 to 16 *inclusive;* 15 & 16 Vict., c. 55, s. 2.
" 27.	Orders as to contingent rights of unborn persons	13 & 14 Vict., c. 60, s. 16.
" 28.	Vesting order in place of conveyance by infant mortgagee	—— s. 8.
" 29.	Vesting order in place of conveyance by heir or devisee of heir, &c., or personal representative of mortgagee	—— s. 19.
" 30.	Vesting order consequential on judgment for sale or mortgage of land	—— s. 29.
" 31.	Vesting order consequential on judgment for specific performance, &c.	—— s. 30.
" 32.	Effect of vesting order	—— ss. 33, 34.
" 33.	Power to appoint persons to convey . .	—— s. 20.
" 34.	Effect of vesting order as to copyhold . .	—— s. 28.
" 35.	Vesting orders as to stock and choses in action	—— ss. 22, 23, 24, 25, 31, 35; 15 & 16 Vict., c. 55, ss. 3, 4, 5, 6; 18 & 19 Vict., c. 91, s. 10.
" 36.	Persons entitled to apply for orders . .	13 & 14 Vict., c. 60, s. 37.
" 37.	Powers of new trustee appointed by the Court	44 & 45 Vict., c. 41, s. 33.
" 38.	Power to charge costs on trust estate . .	
" 39.	Trustees of charities	13 & 14 Vict., c. 60, s. 45.
" 40.	Orders made upon certain allegations to be conclusive evidence	53 & 54 Vict., c. 5, s. 140.

Sect. 41.	Application of vesting order to land out of England	13 & 14 Vict., c. 60, s. 54.
" 42.	Payment into Court by trustees . . .	10 & 11 Vict., c. 96, s. 1; 12 & 13 Vict., c. 74.
" 43.	Power to give judgment in absence of trustee	13 & 14 Vict., c. 60, s. 49.
" 44.	Power to sanction sale of land or minerals separately	25 & 26 Vict., c. 108, s. 2.
" 45.	Power to make beneficiary indemnity for breach of trust	51 & 52 Vict., c. 59, s. 6.
" 46.	Jurisdiction of Palatine and County Courts	17 & 18 Vict., c. 82, s. 11; 52 & 53 Vict., c. 47, s. 8.
" 47.	Application to trustees under Settled Land Acts of provisions as to appointment of trustees	53 & 54 Vict., c. 69, s. 17.
" 48.	Trust estates not affected by trustee becoming a convict	13 & 14 Vict., c. 60, ss. 46, 47.
" 49.	Indemnity	15 & 16 Vict., c. 55, s. 7.
" 50.	Definitions	
51—54.	Repeal, extent of Act, short title and commencement	

TABLE OF ENGLISH STATUTES, RULES AND ORDERS CITED.

[References to English [*] Paging.]

PAGE

20 Hen. III. c. 2 631
3 Edw. I. c. 4. 735
7 Edw. I. stat. 2 [Mortmain] . 718
13 Edw. I. stat. 1, c. 28. . . 696
4 Edw. III. c. 7 . 697, 699, 702, 703
25 Edw. III. stat. 5, c. 5 . . 788
27 Edw. III. stat. 2, c. 9 . . 866
31 Edw. III. stat. 1, c. 11 341, 346, 373, 374, 695, 696
1 Rich. II. c. 12 1601
21 Hen. VIII. c. 4. . . . 821
c. 5, s. 3 346, 352, 374, 400, 452, 1358
s. 8 225
23 Hen. VIII. c. 6. . . . 867
24 Hen. VIII. c. 12, s. 5 . . 488
25 Hen. VIII. c. 19 . . . 488
28 Hen. VIII. c. 11 . . . 630
32 & 34 Hen. VIII. . . 1, 4, 717
32 Hen. VIII. c. 28 . . . 741
c. 34 1631
c. 37 . . . 757, 788, 797
33 Hen. VIII. c. 39 . . . 855
34 Hen. VIII. c. 5 . . . 46
1 Ed. VI. c. 2 225
c. 14 901
1 Eliz. c. 1 488
13 Eliz. c. 5 503
c. 10, s. 2 1609
43 Eliz. c. 4 917
21 Jac. I. c. 16 [Limitations] 1788, 1791, 1837, 1922
17 Car. II. c. 8, s. 2 . . . 779
22 & 23 Car. II. c. 10 [Distributions] 347, 363, 416, 452, 840, 1353, 1356, 1377, 1378
29 Car. II. c. 3 [Statute of Frauds] 62, 64, 73, 78, 80, 82, 84, 85, 89, 104, 111, 119, 163, 347, 601, 623, 666, 1357, 1538, 1674
30 Car. II. c. 7 . . .1867, 1872
c. 12 . . . .1601, 1742
1 Jac. II. c. 17 1378
3 W & M. c. 14 . . . 446, 1559

PAGE

4 & 5 W. & M. c. 20 . . 862, 881
c. 24, s. 12 . . .1601, 1872
W. 5 & M. c. 21, s. 3 . . . 538
9 & 10 Will. III. c. 25, s. 19 . 538
c 41, s. 6 44
4 & 5 Ann. c. 16, s. 19 . . 1842
s. 27 1828
8 Ann. c. 14 1873
3 Geo. I. c. 15, s. 8 . . . 1603
5 Geo. II. c. 7, s. 4 . . . 1531
8 Geo. II. c. 13 724
c. 24, s. 4 1780
9 Geo. II. c. 36 [Mortmain]. 907, 908, 917, 923
14 Geo. II. c. 20, s. 9 . . . 1539
17 Geo. II. c. 38, s. 3 . . . 856
19 Geo. II. c. 37, s. 4 . . . 813
7 Geo. III. c. 38 724
14 Geo. III. c. 78 1643
17 Geo. III. c. 57 724
20 Geo. III. c. 28 1409
23 Geo. III. c. 58 1409
29 Geo. III. c. 51 1409
32 Geo. III. c. 57 . . . 723, 1650
33 Geo. III. c. 54, s. 10 . . . 856
36 Geo. III. c. 52 [Legacy Duty Act, 1796] 1410, *et seq.*
s. 32 . . 1253, 1263, 1818
37 Geo. III. c. 119 . . . 1531
38 Geo. III. c. 87, s. 1 . . . 435
ss. 2, 3, 4, 5. . . . 436
s. 6 . . . 417, 421, 424
s. 7 . . . . . 421, 832
39 & 40 Geo. III. c. 72, s. 16 . . 537
c. 88, s. 10 10
41 Geo. III. c. 86, s. 3 . . . 537
43 Geo. III. c. 107. . . . 919
c. 108 919
45 Geo. III. c. 28, s. 4 . . . 1440
s. 5 1441
47 Geo. III. c. 74 1559
48 Geo. III. c. 149 [Stamp Duty Act, 1808] 1442, 1487

PAGE

48 Geo. III. c. 149 [Stamp Duty Act, 1808]
s. 35 534
s. 36 535
s. 37 536
s. 44 1482
53 Geo. III. c. 127 . . . 61, 225
54 Geo. III. c. 56 724
55 Geo. III. c. 60, s. 4 44
c. 184 [Stamp Duty Act, 1815], 1405
s. 8 . . . . . 534, 538
s. 37 . . . 227, 265, 526, 840
ss. 38 to 51 . . . . 526—533
59 Geo. III. c. 12, s. 8 917
7 & 8 Geo. IV. c. 29, s. 23 . . . 636
9 Geo. IV. c. 14 [Lord Tenterden's Act] 1837, 1838
c. 33 1533
10 Geo. IV. c. 56 856
11 Geo. IV. & 1 Will. IV. c. 20 44, 106
c. 41, s. 5 395
c. 47 446
1 Will. IV. c. 40. . . 1343, 1349,
c. 47, s. 2 1555
s. 3 1555
s. 4 1556
s. 6 1556
s. 8 1557
s. 9 1557
2 & 3 Will. IV. c. 53, s. 19 . . . 395
s. 25 395
s. 26 396
s. 28 396
c. 93 225
c. 115 902
3 & 4 Will. IV. c. 27 [Limitations]
s. 6 . . . . . 557, 1801
s. 25 1926
s. 40 . . . . . 1924, 1925
s. 42 1926
c. 42, s. 2 700, 702, 1600, 1603, 1607, 1799
s. 3 . . . . 1791, 1845
s. 13 1828
s. 14 1828
s. 37 800
s. 38 800
c. 74 [Fines and Recoveries]
s. 27 566
c. 92 490
c. 104, 678, 1558, 1585, 1586, 1587, 1589, 1596
c. 105 [Dower Act]
s. 4 1309
s. 7 1309
s. 8 1309
s. 9 1309
s. 10 1310
s. 12 1219

PAGE

c. 106 [Amendment of Law of Inheritance] . . . 1588
s. 6 359
6 & 7 Will. IV. c. 32 397
c. 59 724
1 Vict. c. 26 [Wills Act, 1837]
s. 1 . . . . . 3, 63
s. 3 . . . . 3, 4, 174, 601
s. 6 . . . . . 601, 1540
s. 7 12
s. 8 . . . . 46, 179, 309
s. 9 . 63, 64, 72, 73, 75, 81, 104, 271, 294, 308
s. 10 . . . . . 308, 309
s. 11 . . . . 63, 104, 332
s. 13 . . . . . 63, 78
s. 15 . . . . . 898, 1762
s. 17 . . . . . 284, 1322
s. 18 160
s. 19 . . . . . 156, 161
s. 20 110, 111, 120, 125, 131, 153
s. 21 . . . 82, 110, 111, 123
s. 22 . . . 152, 163, 168, 172
s. 23 . . . . 582, 1192, 1193
s. 24 . . . 46, 47, 58, 175, 1023, 1192, 1193, 1298, 1301
s. 25 . . . . 586, 1318, 1319
s. 26 929
s. 27 . . . . 47, 1321, 1323
s. 29 966
s. 30 604
s. 31 605
s. 33 1085
s. 34 . . . 63, 112, 153, 170, 179
1 & 2 Vict. c. 110 862
2 & 3 Vict. c. 11, s. 4 863
c. 93 . . . . . 909, 910
3 & 4 Vict. c. 88 . . . . 909, 910
c. 110, s. 11 397
c. 113, s. 42 595
5 & 6 Vict. c. 45 724
c. 79, s. 23 533
c. 82, s. 36 538
c. 100 724
6 & 7 Vict. c. 65 724
c. 73 [Solicitors Act, 1843]
s. 37 1775
s. 38 1776
7 & 8 Vict. c. 73 909
8 & 9 Vict. c. 76, s. 4 . 1442, 1443, 1484, 1487
c. 112 1543
9 & 10 Vict. c. 59 902
c. 93 [Lord Campbell's Act]
s. 1 703
s. 2 704
s. 3 705
s. 4 705

PAGE

9 & 10 Vict. c. 93 [Lord Cambell's Act]
s. 5 706
10 & 11 Vict. c. 96 [Trustee Relief Act, 1847]. . . 1817, 1820
12 & 13 Vict. c. 74 [Trustee Relief Act, 1849]. . 1818, 1819
13 & 14 Vict. c. 35 1824
c. 60 [Trustee A ct, 1850] 1887, 1888, 1889
14 & 15 Vict. c. 25, s. 1 628
s. 3 655
c. 99, s. 2 285
15 Vict. c. 24 [Wills Act Amendment Act]
s. 1 67
s. 2 71
s. 3 72
s. 4 72
15 & 16 Vict. c. 55 [Trustee Act Extension Act, 1852] . . 1889
c. 76 [Common Law Procedure Act, 1852]
s. 11 1843
s. 18 459
s. 55 1779
s. 129 1869
s. 136 1616
c. 86, s. 44 . . 1879, 1880
16 & 17 Vict. c. 51 [Succession Duty Act, 1853] . 1445, *et seq.*
c. 83 [Evidence Amendment Act, 1853] s. 1 285
c. 137 [Charitable Trusts Act, 1853] 926
17 & 18 Vict. c. 47 285
c. 104 [Merchant Shipping Act],
s. 199 394
s. 201 395
c. 113 [Locke King's Act] . 1570
c. 125, s. 27 287
18 & 19 Vict. c. 122 [Metropolitan Building Act, 1855] . 1643
c. 124, s. 22 1819
19 & 20 Vict. c. 41, s. 5 . . 395
c. 94 1403
c. 97 [Mercantile Law Amendment Act]
s. 3 1674
s. 10 . . . . 1791, 1842
s. 13 1838
s. 14 1839
20 & 21 Vict. c. 57 [Malins Act] . 1281
c. 77 [Court of Probate Act, 1857]
s. 2 238
s. 3 . . . . . 237, 241
s. 4 . . . . . 237, 241

PAGE

20 & 21 Vict. c. 77 [Court of Probate Act, 1857]
s. 13 266
s. 22 . . . . 1792, 1793
s. 23 238, 239, 244, 1950, 1952
s. 24 244
s. 25 245
s. 26 259
s. 29 269
s. 30 . . . . 269, 270, 389
s. 31 285
s. 32 286
s. 33 . . . . . 284, 286
s. 46 266
s. 47 266
s. 48 266
s. 49 266
s. 51 268
s. 52 268
s. 53 496
ss. 55, 56, 57 247
s. 58 248
s. 59 247
s. 61 . . . . . 283, 478
s. 62 . . . . . 283, 479
s. 63 . . . . . 283, 480
s. 64 . . . . 263, 328, 481
s. 65 482
ss. 66, 67, 68, 69 . . . 262
s. 70 . . . . 428, 432, 433
s. 71 . . . . . 429, 433
s. 72 431
s. 73 . 306, 353, 382, 383, 384
s. 74 435
s. 75 . . . . . 465, 487
s. 76 505
s. 77 . . 466, 500, 504, 506
s. 78 500
s. 79 . 228, 233, 409, 1176, 1239
s. 80 453
s. 81 . . 454, 456, 458, 1950
s. 82 . . . . . 454, 461
s. 83 455
s. 86 245
s. 87 . . . . 245, 457, 1950
s. 88 245
s. 91 264
c. 79, s. 95 . . . . 296, 299
c. 85 [Matrimonial Causes Act, 1857]
s. 21 . . . . 55, 348, 1276
s. 25 . . . 55, 664, 672, 1276
21 & 22 Vict. c. 56, ss. 9, 12, 14 . 296, 298, 464
c. 95 [Court of Probate Act, 1858]
s. 10 . . . . . 246, 247
s. 12 247
s. 13 247
s. 14 239

PAGE
21 & 22 Vict. c. 56 [Court of Probate Act, 1858]
s. 15 457
s. 16 . . . . . 226, 232
s. 17 245
s. 18 . . . . . 437, 438
s. 19 557
s. 20 245
s. 21 429
s. 22 429
s. 23 260
s. 25 268
s. 26 267
s. 29 296
c. 108, s. 7 . . . . 55, 794
22 Vict. c. 30, s. 1 299
22 & 23 Vict. c. 35 [Lord St. Leonard's Act]
s. 14 577
s. 16 . . . . . 575, 577
s. 26 784
s. 27 . . 1204, 1631, 1822
s. 28 1594
s. 29 . 1206, 1318, 1698, 1822
s. 30 1823
s. 31 . 1722, 1727, 1735, 1739
23 Vict. c. 5 302
c. 34 1437
23 & 24 Vict. c. 15, ss. 4, 5 . . 550
c. 38, ss. 3, 4 862
s. 9 1824
s. 13 1925
s. 14 1781
c. 134 902
c. 145 [Lord Cranworth's Act]
s. 26 1265
s. 30 1694
s. 34 1265
24 & 25 Vict. c. 92, s. 3 . . . 533
c. 97, s. 28 636
c. 114 [Lord Kingsdown's Act]
s. 1 308
s. 2 . . . . . 305, 309
s. 3 . . . . . 302, 309
ss. 4, 5 310
c. 121 . . . . 302, 367, 1400
25 & 26 Vict. c. 68 724
c. 89 [Companies Act, 1862]
s. 16 1626
s. 22 720
s. 75 1626
s. 76 1626
s. 78 1655
s. 99 1627
s. 105 1627
s. 165 1600
Articles 12, 13, . . 1627, 1628
26 & 27 Vict. c. 57 857
ss. 15, 16 396

PAGE
27 & 28 Vict. c. 36, s. 3 . . . 395
c. 56 813
ss. 4, 5 525
c. 95, ss. 1, 2 706
c. 114 [Improvement of Land Act, 1864]
s. 60 1714
28 & 29 Vict. c. 72, s. 2 . . 106, 332
s. 3 332
ss. 4, 5 333
ss. 6, 7 334
c. 78 1714
c. 104, s. 55 1476
s. 57 . . . . 265, 538, 840
c. 111 [Navy and Marines (Property of Deceased) Act]
ss. 3, 4 392
ss. 5, 6, 7 392
ss. 8, 9, 10, 11 393
ss. 13, 15 394
30 & 31 Vict. c. 23, ss. 3, 4 . . 813
c. 69 [Locke King's Act Amendment Act, 1867] . 1573
31 & 32 Vict. c. 109 1651
31 & 32 Vict. c. 124, s. 9 . . . 1439
32 & 33 Vict. c. 46 [Hinde Palmer's Act] 862, 865, 869, 885, 1549, 1849
c. 62 [Debtors Act, 1869] 1930, 1931, 1933, 1934
33 & 34 Vict. c. 14 [Naturalization Act, 1870]
s. 2 . . . . 9, 184, 309, 898
c. 20 [Mortgage Debenture Act, 1865, Amendment Act] 1714
c. 23 [Felony Act, 1870] 60, 61. 373, 558, 1276, 1284, 1285
c. 35 [Apportionment Act]
s. 2 . . . . . 729, 1031
ss. 3, 4, 5 730
s. 6, 7 731
c. 71 [National Debt Act, 1870]
s. 23 . . . . 723, 819, 1227
c. 93 [Married Women's Property Act, 1870] 660, 1276
34 & 35 Vict. c. 27 [Debenture Stock Act, 1871] . . . 1714
c. 43 [Ecclesiastical Dilapidations Act] . 876, 877, 1611
35 & 36 Vict. c. 44 [Chancery Funds Act, 1872] . . . 1263
36 & 37 Vict. c. 52 [Intestates' Widows and Children Act, 1873]
s. 1 . . . . . 248, 390
ss. 2, 3, 4 . . . . 249, 390
ss. 5, 6, 7 390

PAGE

c. 66 [Judicature Act, 1873]
s. 3 239
s. 4 239
s. 16 . . . 240, 342, 1474
s. 18 (subs. 4) . . . 1477
s. 19 490
s. 22 240
s. 23 240
s. 24 (subs. 7) . . . 433
s. 25 (subs. 2) . 1925, 1926
(subs. 4) . . . 563
(subs. 6) . . 734, 818
(subs. 8) . 1952, 1953
(subs. 11) . 563, 806, 823, 1176, 1535, 1705, 1850
s. 31 240
s. 34 . . . . . 240, 244

37 & 38 Vict. c. 42 [Building Societies Act, 1874]
s. 7 397
s. 29 397

c. 57 [Real Property Limitation Act, 1874]
s. 8 1924
s. 10 1925

38 & 39 Vict. c. 27 [Intestates' Widows and Children Act Extension Act, 1875] 249, 391, 517

c. 60 [Friendly Societies Act, 1875]
s. 15 . . . . . 397, 857

38 & 39 Vict. c. 77 [Judicature Act, 1875]
s. 10 . 858, 861, 871, 884, 892, 1547, 1587
s. 11 . . . . 241, 244
s. 18 270

c. 83 [Local Loans Act, 1875] s. 27 1714

c. 92 [Agricultural Holdings Act, 1875] s. 53 . 655

39 & 40 Vict. c. 18 [Treasury Solicitor Act, 1876]
ss. 1, 2, 3, 4, 5 371
s. 6 372
s. 9 . . . . . 372, 454

c. 22, s. 10 397
c. 45, s. 11 397
c. 70 299

40 & 41 Vict. c. 34 [Locke King's Act Amendment Act, 1877] 1574, 1643

42 & 43 Vict. c. 59, s. 3 . . . 61

43 Vict. c. 14 [Customs and Inland Revenue Act, 1880]
s. 9 508
s. 10 . . . . 508, 527. 841
s. 11 . 509, 1417, 1436, 1469

PAGE

44 Vict. c. 12 [Customs and Inland Revenue Act, 1880]
s. 12 . . . . 510, 1410
s. 13 . . . . 510, 1405

43 & 44 Vict. c. 8 1714

c. 42 [Employers' Liability Act, 1880] . . . 707

44 Vict. c. 12 [Customs and Inland Revenue Act, 1881]
s. 26 . . . 510, 525, 538
s. 27 . . . . 511, 527
s. 28 . . . . 513, 836
s. 29 . . . . 514, 527
s. 30 . . . . 514, 538
s. 31 . . . . 514, 528
s. 32 . . . . 515, 529
s. 33 . . . . 516, 1406
s. 34 517
s. 35 518
s. 36 . . . . 518, 1405
s 37 518
s. 38 . 518, 691, 1442, 1444
s. 39 520
s. 40 . 227, 265, 520, 529, 530
s. 41 . . 521, 1407, 1453
s. 42 . . . . 521, 1405
s. 43 . . 521, 1417, 1436

44 & 45 Vict. c. 41 [Conveyancing and Law of Property Act, 1881]
s. 3 (2) 1266
s. 4 . . . . 1645, 1646
s. 6 650
s. 14 811
s. 30 . . 602, 1542, 1645
s 37 . . 815, 1694, 1695
s. 38 826
s. 43 1265
s. 56 1725

45 & 46 Vict. c. 38 [Settled Land Act, 1882]
s. 34 1251
s. 58 1631

c. 61 [Bills of Exchange Act, 1882]
s. 16 (1) 1671
s. 26 (1) 1671
s. 31 (4) 687
s. 31 (5) 812, 1671
s. 41 (1—c) 812
s. 41 (2—a) 812
s. 45 (5) 1875
s. 45 (7) 813, 1874
s. 46 (1) 813, 1798
s. 49 (9) 1874
s. 61 1875

c. 75 [Married Women's Property Act, 1882]
s. 1 (subs. 1) . 47, 56, 605, 606, 662, 736, 920

PAGE

44 & 45 Vict. c. 75 [Married Women's Property Act, 1882]
(subs. 2) . 185, 793, 833, 1741
s. 2 . 56, 605, 662, 736, 1175
s. 4 . . . . . 56, 1551
s. 5 . . 56, 57, 607, 662, 736, 1175, 1277
s. 6 1742
s. 13 . . . . . 1652, 1655
s. 14 . . . . . 1653, 1655
s. 18 . . 186, 833, 1741, 1831
s. 19 . . 607, 663, 737, 1652
s. 22 607
s. 23 . . . . . 57, 1742
s. 24 . . 185, 793, 833, 1741
46 & 47 Vict. c. 47, s. 8 398
c. 52 [Bankruptcy Act, 1883]
s. 4 (subs. 1) 1797
s. 10 1899
s. 30 1939
s. 40 858
s. 44 . . . . 559, 560, 898
s. 47 . . . . . 665, 666
s. 50 (5) 735
s. 125 . . . . 859, 1912
c. 57 [Patents Act, 1883] s. 34 724
c. 61 [Agricultural Holdings Act, 1883]
s. 29 632
s. 34 655
47 & 48 Vict. c. 44 [Naval Pensions Act, 1884] 394
c. 55, s. 4 396
c. 71 [Intestates' Estates Act, 1884]
ss. 2, 3 372
ss. 4, 5, 6, 7, 8, 9 . . . 373
50 & 51 Vict. c. 40, s. 3 . . . 397
c. 55 [Sheriff's Act, 1877] s. 25 1603
c. 67, s. 8 397
c. 71 [Coroners Act, 1887] s. 20 781
c. 73 [Copyhold Act, 1877] s. 45 1543
51 & 52 Vict. c. 8 [Customs and Inland Revenue Act, 1888]
s. 21 1406, 1440, 1442, 1453, 1487
s. 22 . . . . 1468, 1516
c. 43 [County Courts Act, 1888]
s. 58 1830
s. 67 . 1830, 1831, 1906, 1954
s. 68 1955
s. 69 . . . . 1906, 1955
s. 70 1955
s. 74 . . . . 1906, 1956
s. 75 1957
s. 95 . . . . 1798, 1872
s. 120 1958
c. 42 [Mortmain and Charitable Uses Act, 1888]
Pt. II. s. 4 . . . . . 904, 905

PAGE

51 & 52 Vict. c. 8 [Customs and Inland Revenue Act, 1888]
s. 5 906
Pt. III. s. 6 . . . . 906, 912, 917
s. 7 906
s. 11 . . . . . 907, 921
s. 12 . . . . . 907, 916
s. 13 (2) 917
c. 59 [Trustee Act, 1888]
s. 1 (3) 1705
s. 2 1725
s. 4 1706
s. 5 1706
s. 6 1740
s. 7 1704
s. 8 . . . . 1843, 1844, 1928
c. 62 [Preferential Payments in Bankruptcy Act, 1888]. . 875
52 Vict. c. 7 [Customs and Inland Revenue Act, 1889]
s. 5 . . 513, 515, 519, 521
s. 6 . . . . 1446, 1477
s. 7 . . . . 524, 1477 (*b*)
s. 8 . . . . 524, 1477 (*b*)
s. 9 . . . . 524, 1477 (*b*)
s. 10 . . 1459, 1468, 1473
s. 11 1444
s. 12 1515
s. 13 1515
s. 14 . . . . 1410, 1515
52 & 53 Vict. c. 32 [Trust Investment Act, 1889]
s. 3 . . . . . 1249, 1710
s. 4 1713
s. 5 1713
s. 6 1714
s. 9 1710
53 Vict. c. 5, ss. 117, 123 . . 590
c. 16 [Working Classes Dwellings Act, 1890] . . . 907
53 & 54 Vict. c. 39 [Intestates' Estates Act, 1890] . . 370
ss. 1, 2, 3, ... 1359
ss. 4, 5, 6 1360
c. 39 [Partnership Act, 1890]
s. 9 . . . . 1619, 1620
s. 14 (2) 1623
s. 18 1660
s. 22 . . . . . 548, 588
s. 33 (1) 1624
s. 36 (3) 1624
s. 39 1624
s. 42 1625
s. 43 1625
s. 48 1660
c. 71 [Bankruptcy Act, 1890]
s. 1 1797
s. 21 1913

PAGE

54 & 55 Vict. c. 73 [Mortmain and Charitable Uses Act, 1891]
s. 3 . . . . . 925, 1591
s. 4 925
ss. 5, 6, 7, 8 926
ss. 9, 10 927
55 & 56 Vict. c. 11 [Mortmain and Charitable Uses Amendment Act, 1892] . . 906
c. 29, s. 10 . . . . 907, 926
56 & 57 Vict. c. 53 [Trustee Act, 1893] see Add.

ORDER IN COUNCIL [Wills of Seamen] December 28, 1865 335 *et. seq.*, 394

PROBATE RULES, 1862
[Non-Contentious]
r. 4 . . . . . 82, 272
r. 5 . . . . . 82, 272
r. 6 . . . . . 82, 272
r. 7 . . . . . 82, 272
rr. 8, 9, 10, 11 . . . 272
r. 15 . . . . 53, 57, 323
r. 18 (April, 1887) . 53, 57, 323
r. 28 362
rr. 29, 30 416
r. 31 385
r. 32 376
rr. 33, 34 419
rr. 35, 36 420
rr. 38, 39, 40, 41 . . . 463
r. 43 266
r. 44 390
r. 45 . . . . . 266, 389
r. 50 . . . . . 234, 407
rr. 59, 60, 61, 62 . . . 496
rr. 63, 64, 65, 66, 67 . . 496
rr. 68, 69, 79 . . . 261, 379
r. 71 289
r. 73 297
r. 75 379
[Contentious]
rr. 4, 5, 6 275
r. 41 282
r. 60 490
r. 76 846
r. 78 . . . . . 284, 480

RULES OF THE SUPREME COURT, 1883.

Order II. r. 1 274
III. r. 4 . 1778, 1831, 1832, 1920
VIII. r. 1 1843
XI. r. 2 459
XIV. 1832

PAGE

Ord. XV. r. 1 . 1811, 1892
XVI. r. 3 1777
r. 8 1778, 1804, 1832, 1921
r. 9 . 1804, 1920, 1922
r. 11 479, 826, 1831, 1878
r. 32 1804, 1809, 1921, 1922
rr. 33—35 1921
r. 38 1804
r. 39 1922
r. 40 1804, 1919, 1920, 1923
r. 41 1919
r. 46 . 446, 778, 1804, 1879
r. 48 1881
XVII. r. 1 505, 774, 783, 859, 1615, 1616, 1617, 1788, 1845
r. 2 505, 774, 1617, 1788, 1845
r. 3 . . . . 505, 774
r. 4 438, 505, 774, 1615, 1617, 1788, 1845
r. 5 . . . . 505, 775
rr. 6, 7 775
r. 8 . . . . 776, 778
rr. 9, 10 776
XVIII. r. 5 767, 1778, 1782, 1833
XIX. r. 3 . . . .1780, 1846
r. 4 . . . .1851, 1858
r. 6 1892
r. 13 . . . .1835, 1836
XXI. r. 5 . . . .1792, 1920
r. 18 . . . . 281, 314
r. 20 1777
XXII. r. 17 1713
XXIII. r. 2 1772
r. 8 1771
XXIV. 1850
XXV. r. 2 1835
r. 5 1824
XXXI. r. 14 1887
XXXIII. r. 8 1814
XXXIV. r. 8 1824
rr. 9—12 1825
XXXVII. r. 4 . . . 1793, 1794
XLI. r. 3 . . . . 779, 860
XLI. r. 4 . . . . 782, 860
XLII. r. 23, 505, 777, 779, 780, 1553, 1616, 1619, 1797, 1869, 1870
r. 27 1798
XLV. 1863
XLIX. r. 5 . 1778, 1910, 1911
L. r. 9 1241
LII. rr. 19—22 1823
LV. r. 2 (1) to (9) . 1886, *et seq.*
r. 2 (5) 1820
r. 3 1804, 1806, 1821, 1899, 1903
r. 4 . 1806, 1808, 1903
r. 5 1809
r. 6 1809
r. 10 1811

PAGE

Ord. LV. r. 10*a* 1812
r. 12 1899
r. 13*a* . . . 1889, 1890
r. 15 1805
r. 15*a* 1805
r. 44 1822
rr. 44—61 . . . 1693
r. 64 . . . 1241
LVIII. r. 1 . . . 1657
r. 3 . . . 490
r. 15 . . . 490
LIX. r. 1 . . 1932, 1934
r. 4 . . . 248
rr. 10—17 . . . 1958
LXI. r. 31 . . . 1887

PAGE

Or LXV. r. 1 282, 310, 1796. 1813, 1862, 1937, 1944
LXV. r. 6 314

SUPREME COURT FUND RULES, 1886.

r. 41 1819
r. 73 1263
r. 76 1286
r. 99 1263

COUNTY COURT RULES, 1889.

VI. r. 6 1957
XXII. r. 11 1958
r. 12 1958
XLIX. r. 12 247

INDEX OF ENGLISH CASES.

[References to English [*] Paging.]

A.

AARON v. Aaron, 166
Abadam v. Abadam, 1508
Abbis v. Winter, 861, 880
Abbot v. Massie, 1013, 1015, 1147
Abbott v. Abbott, 460, 1346
— v. Middleton, 928, 935
— v. Parfitt, 765, 1521, 1685, 1779, 1817
Abby v. Gilford, 1882
Abdul Messih v. Farra, 305, 1398
Abercrombie v. Hickman,
Abney v. Miller, 1192
Abram v. Cunningham, 501, 1176
Abrey v. Newman, 1329, 1386
Acastor v. Anderson, 841, 843
Acey v. Simpson, 1218
Acherley v. Vernon, 164, 1070, 1291
Ackerley v. Oldham, 375
— v. Parkinson, 375
Ackers v. Ackers, 1949
Ackland v. Lutley, 604, 605
— v. Pring, 601, 604, 1636
Ackroyd v. Smithson, 585
Ackworth v. Ackworth, 1167
Acton v. Acton, 1031, 1224
Adair v. Shaw, 431, 1613, 1742, 1743, 1876
Adam v. The Inhabitants of Bristol, 702, 1791
— v. Buckland, 411
Adam's Trusts, Re, 1127
Adames' Trusts, Re, 662
Adams, In the goods of, 99
— Re, 1267
— and Kensington Vestry, Re, 98, 595
— v. Adams, 949, 1076
— v. Barry, 1914, 1924
— v. Beck, 949
— v. Bush, 950
— v. Cheverel, 761
— v. Claxton, 1721
— v. Cole, 753
— v. Gale, 1752
— v. Gibney, 1632
— v. Jones, 1011
Adams v. Lavender, 751, 1164
— v. Meyrick, 1581
— v. Robarts, 949, 1096, 1108
Adamson, In the goods of, 113, 190
— v. Armitage, 1058
Addams v. Ferick, 1204, 1649
Addison v. Busk, 1093
Addy v. Grix, 82
Adnam v. Cole, 919, 920, 1158
Advocate General v. Ramsay's Trustees, 1489
— v. Smith, 1488
Adye v. Feuilleteau, 1707, 1749
Aikman v. Aikman, 1394
Ainslie, Re, 620, 622
Ainsworth, In the goods of, 68
Aird, In the goods of, 195
Aird's Estate, Re, 939, 1069, 1171
Airey, v. Bower, 176
Aislabie v. Rice, 1128, 1144
Aitchison v. Dixon, 745, 1393
Aitkin v. Ford, 380, 381, 460
Aiton v. Brooks, 1136
Akerman, Re, 1172
— v. Gybbon, 845
Akers v. Dupuy, 410
Alcock v. Sloper, 1038, 1039, 1252
Alder v. Lawless, 1327
Aldrich v. Cooper, 678, 1585, 1586, 1587, 1588
Aldridge v. Wallscourt, 1579
Alexander, In the goods of, 308
— v. Alexander, 1162
— v. Brame, 908
— v. Lane, 220
— v. Lady Gresham, 1523
— v. Mullins, 1877
— v. Sizer, 1671
Alford, Re, 1272
— v. Alford, 173, 354
— v. Earle, 173
— v. Green, 1067
Alger v. Parrott, 992, 993
Alice, Francis's case, 202
All Soul's College v. Coddrington, 1299
Allan v. Gott, 1583, 1584
Alardice v. Onslow, 1398
Allday v. Fletcher, 1283

Allen, In the goods of, 79, 382
— *Re*, 1270, 1271
— Allen, 462
— *v.* Anderson, 696, 1308
— *v.* Bradshaw, 50, 51
— *v.* Callow, 1158
— *v.* Coster, 1273
— *v.* Dundas, 464, 466, 467, 478, 504, 1795
— *v.* Humphreys, 349
— *v.* Hopkins, 502
— *v.* Jackson, 1141
— *v.* Jarvis, 1942
— *v.* McPherson, 38, 42, 293, 315, 468, 472, 473
— *v.* Maddock, 90, 180
— *v.* Story, 1803
— *v.* Thorp, 988, 994, 998
— *v.* Webster, 956, 957
Alleyn *v.* Alleyn, 1164
Allhusen *v.* Whittell, 1247
Allnutt, In the goods of, 87
All Souls' College *v.* Coddrington, 1299
Allum *v.* Fryer, 576
Allsop, *Re*, 1272
Almack *v.* Horn, 942
Almes *v.* Almes, 375, 413
Almosnino, In the goods of, 87, 190
Alsager *v.* Rowley, 1916, 1917
Alston, In the goods of, 1073
— *v.* Trollope, 1700
Alton *v.* Medlicott, 1022
— *v.* Midland Railway Co., 709
Ambrose *v.* Kerrison, 1679
Ames, *Re*, 1762, 1942
— *v.* Cadogan, 1324
— *v.* Parkinson, 1717
Amies *v.* Skillern, 1328
Amis *v.* Witt, 688
Amiss, In the goods of, 65, 82
Amphlett *v.* Parke, 586, 1243
Amsinck *v.* Barklay, 1932
Ancaster *v.* Mayer, 1568, 1569, 1576
Ancona *v.* Waddell, 1131
Anderson, In the goods of, 354
— *v.* Anderson, 899
— *v.* Caunter, 1915
— *v.* Dawson, 991
— *v.* Guichard, 432
— *v.* Laneuville, 1392
— *v.* Martindale, 1774
— *v.* Welch, 290
Anderton *v.* Cooke, 1581
Andree *v.* Ward, 1319
Andrew's Will, *Re*, 973
Andrew Ognel's case, 46, 732
— *v.* Andrew, 1084, 1094, 1113, 1253
— *v.* Clark, 1346
— *v.* Wrigley, 806
Andrews *v.* Emmot, 1578
— *v.* Murphy, 379
— *v.* Partington, 944, 1272
— *v.* Turner, 170
Andros, *Re*, 959
Androvin *v.* Poilblanc, 190
Angell *v.* Dawson, 1709
Angermann *v.* Ford, 1151
Angerstein *v.* Martin, 1240, 1243, 1246
Ankerstein *v.* Clarke, 971
Ann (The), case of, 1392
Ansley *v.* Cotton, 1506
Anstier, *Re*, 1892
Anstruther *v.* Chalmer, 376
Anthony, *Re*, 1575
— *v.* Rees, 574
Aplyn *v.* Brewer, 1729
Applebee, In the goods of, 130
— *Re*, 1177, 1180
Appleby *v.* Appleby, 419
Appleton, *Re*, 1147, 1149, 1151
— *v.* Dolly, 799
— *v.* Rowley, 992, 1329
Apreece *v.* Apreece, 1022, 1220, 1286
Arbery *v.* Ashe, 31
Arbuckle, *Re*, 1271
Archer, In the goods of, 70
— *v.* Hudson, 44
— *v.* Jegon, 1331
Arden *v.* Sullivan, 1642
Armitage *v.* Metcalfe, 1562, 1696
— *v.* Williams, 944, 1385
Armstrong *v.* Armstrong, 759, 947, 977, 1326, 1328, 1341
— *v.* Burnet, 1647, 1649
— *v.* Clavering, 1008
Armytage *v.* Wilkinson, 1122
Arnold *v.* Arnold, 220, 1042, 1043, 1047, 1214, 1296, 1499
— *v.* Blencowe, 206, 409
— *v.* Chapman, 907, 913, 923
— *v.* Preston, 954
Arnold's Estate, *Re*, 1122
— Trusts, *Re*, 937
Arrow *v.* Mellish, 1386
Arrowsmith's Trusts, *Re*, 1090, 1091
Arthur, In the goods of, 71
— *v.* Hughes, 1914
— *v.* Mackinnon, 1303
Arundell *v.* Arundell, 1260
Ash *v.* Ash, 983
Ashbee *v.* Pidduck, 1617
Ashburner *v.* M'Guire, 1023, 1030, 1183, 1185, 1187, 1189
Ashburnham *v.* Ashburnham, 1223
— *v.* Bradshaw, 149
— *v.* Thompson, 1750, 1751
Ashby *v.* Ashby, 744, 1544, 1582, 1663, 1663, 1664, 1833
— *v.* Costin, 1552

Ashby *v.* James, 1838
Ashley, In the goods of, 883
— *Ex parte*, 857
— *v.* Childers, 1182
— *v.* Pocock, 861
— *v.* Waugh, 165
Ashling *v.* Knowles, 1078
Ashmore, In the goods of, 77, 82
Ashmore's Trusts, *Re*, 1098, 1101, 1102
Ashton, In the goods of, 78
— *v.* Ashton, 1020, 1024, 1025, 1026
— *v.* Dawson, 687
— *v.* Langdale (Lord), 908
— *v.* Sherman, 1678, 1679
Ashurst *v.* Eyre, 1878
Ashwell's Will, *Re*, 1926
Ashwell *v.* Lomi, 44
Ashworth v. Munn, 907, 908
Askew *v.* Askew, 459, 1334
— *v.* Woodhead, 1251
Aspinall *v.* Wake, 763, 764
Aspinwall *v.* The Queen's Proctor, 367
Aspland *v.* Watte, 1922
Astbury, *Ex parte*, 642
Astley *v.* Essex (Earl of), 1133
Aston, In the goods of, 1054, 1318
Astor, In the goods of, 87, 300
Atcherley *v.* Du Moulin, 1109
— *v.* Vernon, 581
Atcheson *v.* Atcheson, 947, 1327
Atherton *v.* Crowther, 996
Atkins, *Re*, 778
— *v.* Gardoner, 733
— *v.* Hill, 1673
— *v.* Hiccoiks, 1092
— *v.* Humphrey, 1637, 1665
— *v.* Smith, 301, 365
— *v.* Tredgold, 1841
Atkinson, In the goods of, 82
— *v.* Anderson, 1454
— Barnard, 354, 401
— *v.* Bradford, &c., Building Soc., 1787
— *v.* Henshaw, 432
— *v.* Hutchinson, 940
— *v.* Littlewood, 1163, 1166
— *v.* Turner, 1095
— *v.* Webb, 1164
Atter *v.* Atkinson, 288, 316
Att.-Gen. *v.* Abdy, 1448
— *v.* Aberdare, 1446, 1477, 1477a, 1477b
— *v.* Ailesbury, 549, 590
— *v.* Alford, 1751, 1755, 1756, 1758
— *v.* Bacchus, 1478
— *v.* Baker, 1448, 1455
— *v.* Barkham, 1582
— *v.* Baxter, 903
Att.-Gen. *v.* Beatson, 1498
— *v.* Blucher de Wahlstatt, 1395, 1502
— *v.* Boultbee, 924
— *v.* Bouwens, 296, 366, 545
— *v.* Bowles, 913
— *v.* Bowyer, 921
— *v.* Brackenbury, 1421, 1484
— *v.* Braybrooke, 1455
— *v.* Bright, 973
— *v.* Brunning, 540, 547, 549, 579, 1548, 1549
— *v.* Burnie, 1478
— *v.* Bury, 1299
— *v.* Campbell, 1446, 1502, 1503, 1504
— *v.* Cavendish, 1479
— *v.* Cecil, 1447, 1455, 1456
— *v.* Chapman, 1894
— *v.* Chester, Bishop of, 913, 919
— *v.* Cleave, 1455
— *v.* Clarke, 917, 1009
— *v.* Cockerell, 296, 1498
— *v.* Comber, 918
— *v.* Cornthwaite, 1877
— *v.* Crispin, 943, 1105
— *v.* Dardier, 1410, 1423
— *v.* Davies, 912, 913, 922
— *v.* Day, 1644
— *v.* Dimond, 300, 542, 1524
— *v.* Dillon, 1350
— *v.* Dowling, 1448
— *v.* Downing, 164
— *v.* Dunn, 1393, 1394, 1500
— *v.* Eastlake, 918
— *v.* Fishmongers' Co., 901, 903
— *v.* Fitzgerald, 1392, 1416, 1494
— *v.* Fitzjohn, 1459
— *v.* Fletcher, 1328
— *v.* Floyer, 1447, 1448
— *v.* Forbes, 1499
— *v.* Fowler, 903, 918
— *v.* Gardner, 1447, 1455, 1456
— *v.* Gell, 1447
— *v.* George, 1157, 1159
— *v.* Giles, 1412, 1417
— *v.* Gladstone, 924
— *v.* Goddard, 915
— *v.* Goulding, 922
— *v.* Graves, 908
— *v.* Grote, 1029
— *v.* Haberdashers' Co., 921
— *v.* Hallett, 1461
— *v.* Hancock, 1478, 1491
— *v.* Harley, 907, 1065, 1158
— *v.* Heelis, 918
— *v.* Henniker, 1485
— *v.* Hertford, Lord, 1440, 1486
— *v.* Hickman, 903
— *v.* Higgins, 545

Att.-Gen. v. Higham, 1708, 1717, 1894
— v. Hinxman, 922
— v. Hodgson, 913, 915
— v. Holbrook, 1073, 1479, 1492
— v. Holford, 1489
— v. Hooker, 1342
— v. Hope, 544, 545
— v. Hubbuck, 547, 549
— v. Hudson, 1220
— v. Hull, 912
— v. Hyde, 913, 917
— v. Ironmongers' Co., 924
— v. Jackson, 1441, 1489, 1499, 1500, 1505
— v. Johnstone, 1325
— v. Jones, 8, 908, 1480, 1489
— v. Kent, 1392
— v. Kohler, 376, 377, 1387, 1751, 1755, 1810
— v. Lawes, 903, 918, 924, 1947
— v. Littledale, 1447, 1456, 1457, 1459
— v. Lloyd, 148
— v. Lomas, 548
— v. Loscombe, 1478
— v. Malkin, 994, 998, 1003
— v. Mangles, 1488, 1489
— v. Manners, 1478
— v. Metcalfe, 1488
— v. Mill, 921
— v. Mitchell, 1421, 1448, 1449, 1459
— v. Montefiore, 1446, 1458
— v. Munby, 913, 921, 1417
— v. Napier, 1397, 1502
— v. Nash, 917, 1494
— v. Northumberland, 918
— v. Noyes, 1456, 1466
— v. Parnther, 17, 18, 22
— v. Partington, 351, 465, 540, 755, 756, 758
— v. Pearce, 918
— v. Pearson, 903
— v. Pickard, 1440, 1484, 1485
— v. Potter, 1236
— v. Pratt, 542, 545
— v. Price, 918, 980
— v. Randell, 1731
— v. Robertson, 1447
— v. Robins, 1220, 1222
— v. Rowe, 1392
— v. Rushton, 1456
— v. Sefton, Lord, 1460
— v. Shore, 903
— v. Shrewsbury, Corporation of 918
— v. Sibthorp, 1447, 1455, 1468
— v. Sibthorpe, 1011
— v. Simcox, 1488
— v. Smythe, 1447
Att.-Gen. v. Southgate, 1583
— v. Staff, 550
— v. Stepney, 922
— v. Stewart, 921
— v. Tancred, 921
— v. Tomkins, 908, 1347
— v. Upton, 1450
— v. Virginia College, 918
— v. Wahlstatt (Blucher de), 1395, 1502
— v. Wansay, 903
— v. Ward, 150
— v. Weymouth, 907
— v. Whitchurch, 922
— v. Whorwood, 921
— v. Williams, 912
— v. Wilson, 903
— v. Wood, 1478
— v. Wyndham, 1487
— v. Wynford, 1413
— v. Yelverton, 1447, 1448
Attree v. Attree, 929
— v. Hawe, 907, 908, 910
Attridge, In the goods of, 92
Attwater v. Attwater, 1027, 1130
Attwood v. Alford, 1060
Aubin v. Daly, 719
Audsley v. Horn, 946, 967, 977
Austen, In the goods of, 106
— v. Graham, 31
— v. Halsey, 1146
— v. Willes, 92
Auster v. Powell, 1375
Auther v. Auther, 1025, 1211
Aveling v. Knipe, 572
Avelyn v. Ward, 1025, 1134, 1187
Avery v. Cheslyn, 659
— v. Osborne, 1936
Avison v. Simpson, 984, 1317
Awdley v. Awdley, 589
Axford, *Re*, 14
Ayles's Trusts, *Re*, 957
Alesbury, Countess of, case of, 1041, 1043
Aylesford v. Poulett, 1942
Ayliff v. Ayliff, 496
Ayliffe v. Murray, 1760
Ayling, In the goods of, 272
Aylmer v. Hide, 1634
Aynsworth v. Pratchett, 1292
Ayres, In the goods of, 462
Ayrey v. Hill, 17, 85
Ayton v. Ayton, 944

B

Bachelor v. Bean, 1742
Bacon's will, *Re*, 1344, 1348, 1349
Bacon v. Bacon, 1721, 1732
— v. Clark, 1708, 1724
— v. Simpson, 343, 555

Badart's Trusts, *Re*, 1446, 1502
Baddeley *v.* Baddeley, 670
— *v.* Curwen, 1917
Baden *v.* Earl of Pembroke, 581, 738
Badenach, In the goods of, 228, 234
Badger *v.* Gregory, 1333
Badham *v.* Mee, 1155
Badrick *v.* Stevens, 1031, 1184
Bafield *v.* Collard, 717
Bagley *v.* Mollard, 954, 955, 957
Bagot *v.* Bagot, 1567
— *v.* Oughton, 1568
Bagshaw *v.* Winter. 1281
Bagster *v.* Fackerell, 587
Bague *v.* Dumergue, 1212, 1260
Bagwell *v.* Dry, 1080, 1326
Baigent *v.* Baigent, 260
Bailey, In the goods of, 60, 72
— *v.* Bailey, 578
— *v.* Boult, 1510
— *v.* Bristowe, 845
— *v.* Finch, 1784, 1846
— *v.* Gould, 1704
— *v.* Hammond, 1284
— *v.* Ploughman, 888
— *v.* Wright, 983
Baillie *v.* Baillie, 1801
— *v.* Butterfield, 467, 1156, 1157
— *v.* Edwards, 1782
— *v.* Treharne, 759, 1341
Baily, In the Goods of, 198
Bain *v.* Brand, 646
— *v.* Sadler, 888, 1549
— *v.* Lescher, 946, 1081
Bainbridge *v.* Bainbridge, 1064, 1065
Bainbrigge *v.* Blair, 1761, 1762
Baines *v.* Dixon, 930
— *v.* Ottey, 995
Baird's case, 1626, 1627, 1683
Bainton *v.* Ward, 1550
Baker, *Re*, 888, 1206, 1739, 1859, 1912
— *v.* Baker, 1212, 1213, 1260, 1385
— *v.* Batt, 101
— *v.* Bayldon, 975, 1281
— *v.* Brooks, 455, 841
— *v.* Carter, 1936
— *v.* Dening, 64, 82
— *v.* Farmer, 1212, 1217
— *v.* Gibson, 1327
— *v.* Gostling, 727
— *v.* Hall, 750
— *v.* Hanbury, 1075
— *v.* Martin, 1153
— *v.* Read, 1922
— *v.* Russell, 496
— *v.* Sutton, 915, 923
Balch *v.* Symes, 261
Balchen *v.* Scott, 1739
Baldwin *v.* Baldwin, 751, 915
— *v.* Church, 818, 1835
Baldwin *v.* Rogers, 988
— *v.* Thompson, 781
Baldwyn *v.* Johnson, 1339
Ball's Trust, *Re*, 953
Ball, *Re*, 937, 938
— *v.* Harris, 1558
— *v.* Mannin, 34
— *v.* Montgomery, 1279
— *v.* Oliver, 432
Ballard *v.* Marsden, 1232
Ballingall, In the goods of, 377, 459
Balls *v.* Westwood, 1604
Bally *v.* Wells, 1630
Balm *v.* Balm, 942
Balmain *v.* Shore, 1106
Bamfield *v.* Wyndham, 1582
Banfield *v.* Pickard, 259
Bangham, In the goods of, 87, 159
Bank of Australasia *v.* Nias, 1392
Bank of England *v.* Lunn, 721
— *v.* Moffat, 721
— *v.* Parsons, 721
Banks *v.* Goodfellow, 28, 33
— *v.* Sladen, 1297
Bannatyne *v.* Bannatyne, 20
Banner, *Ex parte*, 1219
Bannerman's Estate, *Re*, 1508
Barber, *Ex parte*, 1057
— In the goods of, 319
— *Re*, 756, 899, 988, 1762, 1942, 1943
— *v.* Barber, 1083, 1148, 1293, 1334
— *v.* Fox, 1670
— *v.* Mackrell, 1772, 1891, 1892
— *v.* Walker, 1914
Barclay *v.* Wainwright, 1158
Barden, In the goods of, 182, 327, 331
Barford *v.* Stuckey, 697, 1774
Barham *v.* Lord Thanet, 1567, 1568, 1569
Barker's Estate, *Re*, 1324
Barker, In the goods of, 378, 386, 405, 406
— *Re*, 1448, 1450, 1924
— *v.* Barker, 1682
— *v.* Birch, 1917
— *v.* Hill, 581
— *v.* Lea, 1082
— *v.* Martin, 1922
— *v.* May, 579, 1549
— *v.* Rayner, 1184
— *v.* Talcot, 792, 1697
— *v.* Young, 936
Barksdale *v.* Gilliat, 1507, 1509
Barlow *v.* Bateman, 983
— *v.* Bishop, 739
— *v.* Grant, 1154, 1264, 1274
— *v.* Orde, 953, 956, 957
Barnaby *v.* Tassell, 1045, 1084
Barnard *v.* Ford, 1279

Barnard *v.* Pumfret, 1228, 1671, 1673, 1893, 1894, 1895
Barnes's case, 825
Barnes *v.* Allen, 773
— *v.* Crowe, 164, 165
— *v.* Patch, 989, 1386
— *v.* Rowley, 1061
— *v.* Vincent, 50, 57, 308
Barnesly *v.* Powell, 468, 471, 472, 473
Barnett, *Re*, 903
— *v.* Blake, 1109
— *v.* Guildford, 557
— *v.* Sheffield, 1261, 1897
— *v.* Tugwell, 953, 1072
Barnwell *v.* Iremonger, 1565, 1947
Barr *v.* Barr, 432
— *v.* Carter, 205
— *v.* Jackson, 466
Barraclough *v.* Greenhough, 481
Barrett, *Re*, 1700, 1811
Barrington *v.* Tristram, 943, 1285
Barrow *v.* Barrow, 132, 1278
Barrs *v.* Fewkes, 1346, 1349
Barry *v.* Butlin, 100, 103, 289, 290
— *v.* Harding, 1056, 1196, 1583
— *v.* Robinson, 1828
— *v.* Rush, 1675
Bartholomew, *Re*, 1097
— *v.* Henley, 95, 145
— *v.* May, 1563
Bartleman *v.* Murchison, 937
Bartlett *v.* Dimond, 1830
— *v.* Gillard, 1164, 1165
Barton's Will, *Re*, 759, 1341
Barton *v.* Barton, 1131
— *v.* Cooke, 1023, 1154, 1224
— *v.* Hassard, 1749
— *v.* London & North Western Railway Company, 819
— *v.* North Staffordshire Railway Company, 819
— *v.* Robins, 14, 315
— *v.* Rock, 432
Barwick *v.* Mullings, 311
Basan *v.* Brandon, 1031, 1188
Basham, *Re*, 1938, 1939, 1940
Bascomb *v.* Harrison, 279
Basset *v.* Percival, 1567
Bassett's Estate, *Re*, 1017, 1317
Batard *v.* Hawes, 1624, 1663
Bate, *Re*, 1592
— *v.* Payne, 1479, 1506
— *v.* Robins, 573, 1702
— *v.* Scales, 1754
Bateman, In the goods of, 384, 385
— *v.* Grey, 944
— *v.* Hotchkin, 1589
— *v.* Margerison, 342
— *v.* Roden, 1582
Bates *v.* Dandy, 608
Bates *v.* Mackinley, 1248
— *v.* Moore, 1886
Bath *v.* Abney, 1657
Bathe *v.* Bank of England, 55, 794
Bathurst *v.* De Latouche, 893
— *v.* Errington, 929
Batsford *v.* Kebbell, 1102, 1107, 1109
Batt *v.* Anns, 1268
— *v.* Cuthbertson, 744
Batteley *v.* Windle, 1345
Batten, In the goods of, 272, 273
Batterbee, In the goods of, 385
Battersbee, In the goods of, 87
Batthyany *v.* Walford, 1593
Baud *v.* Fardell, 1716
Baugh *v.* Read, 1197
Baxter *v.* Burfield, 722, 1597, 1649, 1650
— *v.* Gray, 1657
— *v.* Losh, 1081
Bayard, In the goods of, 205, 406
Bayley's Settlement, *Re*, 947, 949
Bayley *v.* Bishop, 1062
Bayley *v.* Snelham, 956
Baylis In the goods of, 190, 192, 198
— *v.* Att.-Gen., 1013
— *v.* Sayer, 93
Bayly *v.* Bayly, 1805
Bayne In the goods of, 206
Baynton *v.* Collin 1062
Baxter *v.* Losh, 1080
Beach *v.* Clarke, 93
Beachcroft *v.* Beachcroft, 957
Beak's Estate, *Re*, 689
Beal *v.* Simpson, 424
Beale *v.* Beale, 282, 950
— *v.* Symonds, 1560
Beales *v.* Crisford, 947, 977, 989, 1052
Beall *v.* Hilliary, 1808
Beard *v.* Beard, 162, 327
Beardmore v. Gregory, 256
Beasney's Trusts, *Re*, 264
Beauchamp *v.* Lord Huntley, 1911
Beaufort *v.* Dundonald, 1299
Beaufoy's Estate, *Re*, 1251
Beaumont's Trusts, *Re*, 915
Beaumont *v.* Oliveira, 918, 1590
— *v.* Squire, 1140, 1146
Beavan, In the goods of, 123, 124, 390
— *v.* Beavan, 1249, 1251
— *v.* Lord Hastings, 215
Beaver *v.* Nowell, 971
Beck *v.* Burn, 1096
— *v.* Pierce, 1654
— *v.* Rebow, 647
Beckett *v.* Howe, 75, 77, 90
Beckford *v.* Parnecott, 164
— *v.* Tobin, 1287
Beckley *v.* Dorington, 1916
Beckton *v.* Barton, 1197
Beckwith *v.* Beckwith, 1333

Beckwith *v.* Bullen, 1782
Bective *v.* Hodgson, 586, 587
Bedell *v.* Constable, 204
Bedford, In the goods of, 125
Bedson's Trusts, *Re*, 931, 932 943
Beech, *v*, Keep, 1658
Beeching, *v.* Morphew, 1701
Beer, In the goods of, 204, 321, 408
Beeston *v.* Booth, 1222, 1223
Beeton *v.* Darkin, 1384
Beggia, In the goods of, 365, 376
Begley *v.* Cook, 1329, 1386
Belaney *v.* Belaney, 1544
Belbin *v.* Skeats, 269, 286
Belcher *v.* Belcher, 1908, 1909
— *v.* Maberly, 460
Belchier, *Ex parte*, 1721, 1722, 1723
Belk *v.* Slack, 1138
Bell, In the goods of, 190, 321, 350
— *v.* Armstrong, 277, 278, 279, 281
— *v.* Bell, 1173
— *v.* Fothergill, 116, 134
— *v.* Jackson, 1155
— *v.* Kennedy, 1393, 1394
— *v.* Timiswood, 364
Bellairs *v.* Bellairs, 1119, 1141, 1267
Bellamy, *Re*, 606, 613
Bellasis *v.* Uthwatt, 1164, 1168
Bellew *v.* Bellew, 429, 430
— *v.* Juckledon, 1861
Belt *v.* Slack, 1330
Belvidere *v.* Rochfort, 1570
Bempde *v.* Johnstone, 1392
Benbow, In the goods of, 277
Benfield *v.* Solomons, 1917
Benham's Trusts, *Re*, 264
Beningfield *v.* Baxter, 1918
Benn, *Re*, 1332, 1333, 1334
— *v.* Dixon, 1040, 1252
Bennet *v.* Batchelor, 1326, 1347
— *v.* Bennet, 1200, 1370
Bennett, *Re*, 1922
— *Re*, Kirk, *Ex parte*, 1171
— *v.* Attkins, 1936
— *v.* Bennett, 966
— *v.* Hayter, 924
— *v.* Houldsworth, 1196
— *v.* Lytton, 1204
Bennett's Trusts, *Re*, 1079, 1108
Bennison, In the goods of, 455
Benson *v.* Benson, 114, 125
— *v.* Maude, 1240, 1287
— *v.* Whittam, 1052
Bent *v.* Cullen, 1059, 1061
Bentham *v.* Wiltshire, 575, 576
Bentinck *v.* Portland, 1116
Bentley *v.* Meech, 936
— *v.* Oldfield, 1583
Benyon *v.* Benyon, 1156, 1158
— *v.* Maddison, 1105
Beresford *v.* Browning, 1622
— *v.* Hobson, 1283
Bergman, In the goods of, 495, 497
Berkeley *v.* Swinburne, 943, 944, 1122
Bernal *v.* Bernal, 976
Bernard *v.* Minshull, 1320, 1321
— *v.* Montague, 974, 1090
Bernasconi *v.* Atkinson, 1011, 1012
Berrington *v.* Evans, 1930
Berry *v.* Berry, 952
— *v.* Briant, 1332
— *v.* Gibbons, 803
— *v.* Taunton, 809
— *v.* Usher, 583, 1179, 1180
Berryman *v.* Peacock, 622
Bertie *v.* Chesterfield, 1655
Berwick *v.* Andrews, 699, 1601, 1865, 1867, 1868
— Mayor of, *v.* Murray, 1756
Besant *v.* Cox, 1126
Bescoby *v.* Pack, 1056
Best's Settlements, *Re*, 993
Best *v.* Argles, 744
Bethell *v.* Abraham, 1707
— *v.* Green, 1565
— *v.* Stanhope, 1535
Bethune *v.* Kennedy, 1028, 1035, 1039, 1252
Betts, In the goods of, 197
— *v.* Kimpton, 755
Betty Smith's Trusts, *Re*, 1134
Bevan's Trusts, *Re*, 1104, 1113
Bevan *v.* Atty.-Gen., 1022
Beverley's case, 12, 14
Bewick *v.* Whitfield, 622
Bewley, *Re*, 1629
Bewsher *v.* Williams, 313
Bianchi, In the goods of, 1395
Bibb *v.* Thomas, 116
Bibby *v.* Thompson, 977, 990
Bibin *v.* Walker, 96
Bick *v.* Motley, 1755
Bickham *v.* Cruttwell, 1563, 1569, 1578
Bicknel *v.* Page, 1582
Bide *v.* Harrison, 1063
Biederman *v.* Seymour, 1588
Biggar, In the goods of, 51
Biggs *v.* Andrews, 584
Bignell *v.* Harpur, 1666
Bilborough *v.* Holmes, 1623
Bill *v.* Kinaston, 1253
Billing *v.* Billing, 1130
— *v.* Brogden, 1895
Billinghurst *v.* Spearman, 601, 1637
— *v.* Vickers, 35, 36, 100, 288, 289, 316
— *v.* Walker, 1567
Billings *v.* Sandom, 1127
Billingsley *v.* Wills, 1107
Binckes, In the goods of, 442

Bindon, Viscountess of, 674
Bingham *v.* Bingham, 1357
Binnington *v.* Harwood, 1758
Binns *v.* Nicholls, 1587
Biou, In the goods of, 446
Birch, *Re*, 1143, 1206, 1859
— *v.* Baker, 1185
— *v.* Birch, 113
— *v.* Dawson, 647, 1050
— *v.* Sherratt, 1212
— *v.* Wright, 1604
Bird, *Re*, 1721, 1814
— *v.* Bird, 33
— *v.* Hunsdon, 1143
— *v.* Maybury, 1099
— *v.* Le Fevre, 1319
— *v.* Luckie, 987
— *v.* Peagrum, 661, 755
— *v.* Ralph, 1610, 1612
— *v.* Webster, 973
— *v.* Wood, 988
Birkett, *Re*, 921, 925
— *v.* Vandercom, 205
Birks *v.* Birks, 138, 146, 293
Birt, In the goods of, 71
— *Re*, 887
Birtwhistle *v.* Vardill, 1388
Biscoe *v.* Jackson, 924
Bishop *v.* Church, 1621, 1846
— *v.* Curtis, 3, 812
— *v.* Elliott, 640, 648
— *v.* Wall, 59
Bissell *v.* Axtell, 1877
Bissett *v.* Antrobus, 838
Bittleston *v.* Clark, 280
Bizzey *v.* Flight, 86, 87, 1307
Blachford, *Re*, 1928
Black *v.* Jobling, 132
Blackborough *v.* Davis, 355, 358, 359, 360, 493, 503, 570, 890, 1377, 1378, 1381, 1382
Blackett *v.* Blackett, 1880
Blackham's case, 477
Blackman, *Re*, 1011
Blackmor *v.* Mercer, 1865, 1866
Blackmore *v.* Snee, 1330
Blackshaw *v.* Rogers, 1211, 1220
Blackwell, In the goods of, 198
— *v.* Bull, 990
— *v.* Child, 1189
— *v.* Pennant, 1008
Blackwood *v.* The Queen, 854, 1531
Blades *v.* Free, 1656
— *v.* Higgs, 619
Blagrave, In the goods of, 362
Blagrove *v.* Coore, 178, 953
Blaiklock *v.* Grindle, 1308
Blainfield *v.* March, 252
Blair *v.* Bromley, 1623
— *v.* Nugent, 1800
Blake, *Re*, 1949
— *v.* Blake, 74, 78, 90, 93, 1193, 1882
— *v.* Gale, 1314
— *v.* Gibbs, 628
— *v.* Knight, 75, 77, 91, 276
— *v.* Midland Railway Company, 704
— *v.* Shaw, 1051
Blakeley's case, 1627
Blakeley *v.* Blakeley, 1891
Blakemore's Settlement, *Re*, 1122
Blakesley *v.* Smallwood, 1846
Blamire *v.* Geldart, 1105
Bland *v.* Davison, 1878
— *v.* Lamb, 1317, 1319, 1325
— *v.* Williams, 1111
Blandford *v.* Fackerell, 922
Blandy *v.* Widmore, 1362, 1365
Blankard *v.* Galdy, 1532
Blann *v.* Bell, 1040, 1058, 1252, 1584, 1591
Blasson *v.* Blasson, 1367
Blatchford *v.* Wooley, 1550
Blease *v.* Burgh, 942, 1089, 1129
Bleckley, In the goods of, 132
Blenkinsop *v.* Foster, 1886
Blewitt, In the goods of, 82, 123
— *v.* Blewitt, 257, 1914
— *v.* Roberts, 1058, 1059, 1060
Bligh *v.* Brent, 720
— *v.* Lord Darnley, 1524, 1590
Blight *v.* Hartnoll, 1059, 1060, 1061, 1320
Blinkhorne *v.* Feast, 1847
Bliss *v.* Putman, 1511
Blockley, *Re*, 1375, 1376
Blogg *v.* Johnson, 1751
Bloomfield, In the goods of, 1318
Blount, *Re*, 1907
— *v.* Bestland, 746
— *v.* Burrow, 682, 684, 685
— *v.* Hipkins, 1582, 1649
Blower's Trusts, *Re*, 962, 963
Blower *v.* Morrett, 1218, 1220, 1223
Bloxam *v.* Faure, 10, 304, 309
Blue *v.* Marshall, 1697
Bluett *v.* Jessop, 1948
Blundell *v.* Chapman, 936, 978
— *v.* Dunn, 956
— *v.* Gladstone, 1011
Blundell's Trust, *Re*, 902
Boardman *v.* Stanley, 1054
Boatwright *v.* Boatwright, 1839, 1929
Boddicott *v.* Dalzeel, 192, 402
Boddington, In the goods of, 1179
— *Re*, 1016, 1142
Boddy *v.* Dawes, 1292
Bodger *v.* Arch, 553
Bodman, *Re*, 1056

Body *v.* Hargrave, 1520
— *v.* Kent, 1918
Boehm, In the goods of, 293, 316, 317
— *v.* Wood, 1933
Bolger *v.* Mackell, 1089
Bolingbroke *v.* Kerr, 765
Bollard *v.* Spencer, 760
Bolton, In the goods of, 300
— *Re*, 954, 957
— *v.* Powell, 458
Bonaparte, Napoleon, *Re*, 263, 324
Bond, *Ex parte*, 1273
— *v.* Bond, 430, 462
— *v.* England, 1567
— *v.* Faikney, 200
— *v.* Graham, 297, 1914
— *v.* Nurse, 1830
— *v.* Seawell, 85
— *v.* Simmons, 751
— *v.* Walford, 1806
Bone *v.* Cook, 1074
— *v.* Whittle, 282
Bonifaut *v.* Greenfield, 823
Bonithon *v.* Hockmore, 1768
Bonner, *Re*, 965
— *v.* Bonner, 1590
Bonney *v.* Ridgard, 806
Bonsor and Smith's Contract, *Re*, 1801
Booker *v.* Allen, 1161, 1195, 1197, 1199
Boon's case, 843
Booth's Trusts, 299
Booth *v.* Booth, 1092, 1096, 1691, 1724, 1734
— *v.* Coulton, 1212, 1213, 1289
— *v.* Carter, 913
— *v.* Dean, 1007
— *v.* Vicars, 988, 1001, 1385
Bootle, In the goods of, 182, 327
— *v.* Blundell, 1577, 1578, 1579, 1581, 1582
Boraston's case, 1106
Boreham *v.* Bignall, 961, 1109
Borlase *v.* Borlase, 22
Borton *v.* Borton, 744, 1131
— *v.* Dunbar, 1054, 1318
Bosanquet *v.* Bosanquet, 77
Bostock *v.* Floyer, 1720, 1723
Boston *v.* Fox, 281
Boswell, In the goods of, 323
Bosworth, *Re*, 1891
Bothamley *v.* Sherson, 177, 1019, 1021, 1023, 1024, 1028, 1301, 1646, 1648
Bothomly *v.* Fairfax, 865
Bouchier *v.* Taylor, 465
Boughey *v.* Moreton, 133
Boughton *v.* Boughton, 1308, 1584
— *v.* Knight, 29, 31, 312
Boulton *v.* Beard, 1109
— *v.* Canon, 1634
Boulton *v.* Pilcher, 1099
Bourke *v.* Ricketts, 1295
Bourne *v.* Bourne, 604
— *v.* Fosbrook, 661
Bousfield *v.* Lawford, 1174
Bouts *v.* Ellis, 689, 690
Bouverie *v.* Bouverie, 1331
— *v.* Maxwell, 457, 1950
Bowaman *v.* Reeve, 1587
Bowden *v.* Bowden, 1039
Bowen, *Re*, 1892
Bowerbank *v.* Monteiro, 1671
Bowers *v.* Bowers, 1126, 1330
— *v.* Littlewood, 1368, 1384
Bowes, *Re*, 1638
— *v.* Bowes, 165
Bowker *v.* Evans, 783
— *v.* Hunter, 1347
Bowles *v.* Bowles, 947
— *v.* Harvey, 844
Bowman, *Re*, 1333
— *v.* Hodgson, 286
Bowsher *v.* Watkins, 1917, 1918
Bowyer *v.* Griffin, 1939
Box, *Re*, 1649
— *v.* Barrett, 1305
— *v.* Box, 744
— *v.* Jackson, 744
Boxall *v.* Boxall, 501, 1278
Boyd *v.* Brooks, 893
— *v.* Boyd, 1374, 1375, 1376
— *v.* Buckle, 1260
Boydell *v.* Golightly, 638
Boyes, *Re*, 90, 330, 331, 1350
— *v.* Cook, 176, 1323
Boyle, In the goods of, 232
Boynton *v.* Boynton, 778, 1789
Boyse, *Re*, 1529, 1801
Boynton *v.* Richardson, 1936
Boyntun *v.* Boyntun, 678
Boys *v.* Boys, 1039, 1252
— *v.* Bradley, 986
— *v.* Morgan, 1317
— *v.* Williams, 1029, 1161
Boyse *v.* Rossborough, 41
Brace, *Re*, 1323
Bracebridge *v.* Cook, 612
Bracken, *Re*, 1207, 1822
Brackenbury, In the goods of, 378, 379
Bradbury *v.* Morgan, 1595, 1660
Braddock, In the goods of, 86, 93
Braddon *v.* Farrand, 1345
Bradford *v.* Young, 241, 465, 476, 487, 940, 1395
Bradley, In the goods of, 114, 191
— *v.* Peixoto, 1129
Bradly *v.* Heath, 1670
Bradshaw, In the goods of, 494
— *v.* Bradshaw, 1273

Bradshaw *v.* Lancashire and Yorkshire Railway Co., 709
— *v.* Melling, 975
— *v.* Tasker, 902
Bragner *v.* Langmead, 860
Braham *v.* Burchell, 54, 277, 278
Braine *v.* Braine, 269
Braithwaite, *Re*, 1257
— *v.* Britain, 1841
— *v.* Cooksey, 1872, 1873
— *v.* Skinner, 1829
Brake, In the goods of, 1012
Bramley *v.* Bramley, 282, 312
Brand, In the goods of, 36, 136
Brandon *v.* Aston, 944
— *v.* Brandon, 976, 980, 985
— *v.* Robinson, 1130, 1131
Brandram, *Re*, 1886
Bransby *v.* Grantham, 564
— *v.* Haines, 46
Branstrom *v.* Wilkinson, 1293
Brant *v.* King, 448
Brantom *v.* Griffits, 623
Brassey *v.* Chalmers, 825
Brassington *v.* Ault, 253, 569, 786, 1777
Brawley *v.* Wade, 936
Bray *v.* Tofield, 1907
Braybrooke, Lord, *v.* Att.-Gen., 1447, 1448, 1455, 1468
Brazier *v.* Hudson, 250
Bree *v.* Perfect, 1096, 1113
Breedon *v.* Tugman, 1103
Breed's Will, *Re*, 1270
Bremer *v.* Freeman, 302, 304, 313, 1392
Brenchley *v.* Lynn, 151, 323, 328, 447
— *v.* Still, 326
Breton, *Re*, 670
— *v.* Mockett, 1253
Brett *v.* Brett, 898
— *v.* Cumberland, 609, 1631
— *v.* Horton, 1385
Brewer *v.* Pocock, 1204
Brewis, In the goods of, 87, 89
Brewster, In the goods of, 115
Briant, *Re*, 1172, 1175
Brice *v.* Wilson, 1678, 1680
Brickenden *v.* Williams, 1322
Briden *v.* Hewlett, 988
Bridge *v.* Abbott, 1000, 1006, 1075, 1366
— *v.* Bridge, 1658
— *v.* Brown, 839, 1275
— *v.* Yates, 1328
Bridger, In the goods of, 204
— *Re*, 927
Bridges *v.* Bridges, 1064
— *v.* Duke of Newcastle, 374
— *v.* Smyth, 1604, 1784
Bridgman *v.* Dove, 1049, 1066, 1579
Bridgnorth (Corporation of) *v.* Collins, 965
Brier, *Re*, 1720, 1721, 1722, 1892
Briers *v.* Goddard, 423
Brigden *v.* Parkes, 1664
Briggs, *Re*, 1912
— *v.* Penny, 90, 330, 1349, 1350
— *v.* Roope, 379
— *v.* Upton, 995
— *v.* Wilson, 1700, 1701
Bright's Trusts, *Re*, 1106, 1108, 1111
Bright *v.* Larcher, 1212, 1924
— *v.* Rowe, 1082, 1115, 1138
Bright Smith, *Re*, 929
Brightman *v.* Keighley, 189, 193, 1537, 1696
Brighton, In the goods of, 349
Brine *v.* Ferrier, 1157
Brinkman *v.* Brinkman, 680
Brinsmead *v.* Harrison, 568
Bristol (Dean of) *v.* Guyse, 1778, 1883
Bristow *v.* Bristow, 1011, 1162, 1285, 1947
British Guardian Life Assurance Co., *Re*, 1600
British Museum *v.* White, 78, 918
British Mutual Investment Co. *v.* Smart, 1556, 1560, 1561
Britten *v.* Britten, 1280
Brittlebank *v.* Goodwin, 1922
Britton *v.* Batthurst, 880
— *v.* Jones, 1853
Broadhurst *v.* Balguy, 1724, 1728, 1729, 1730, 1732
Broadmead *v.* Wood, 947
Broadwood, *Re*, 1886
Brock *v.* Bradley, 1134
Brocksopp *v.* Barnes, 1759
Brodie *v.* Barry, 673, 1307
Brogden, *Re*, 1313
— *v.* Brown, 17, 23, 290, 848
Broker *v.* Charter, 226, 232, 1239
Bromage *v.* Lloyd, 812
Bromfield *v.* Chichester, 1518
— *v.* Crowder, 1112
Bromhall *v.* Wilbraham, 1580
Bromley *v.* Brunton, 689, 690
— *v.* Wright, 584, 1062
Bronsdon *v.* Winter, 1021, 1188
Brook *v.* Badley, 907, 911
— *v.* Skinner, 1802
— *v.* Turner, 48
Brooke, In the goods of, 124
Brooke *v.* Brooke, 668
— *v.* Haymes, 227, 233
— *v.* Kent, 112, 125
— *v.* Lewis, 1240
— *v.* Turner, 48, 1042, 1046, 1048
Brookes *v.* Stroud, 1776
Brooking *v.* Jennings, 425, 881
Brooks *v.* Oliver, 1876
Brooksbank, *Re*, 1304, 1305

Brooksbank *v.* Smith, 1929
— *v.* Wentworth, 1051
Broome *v.* Monck, 1643, 1644
Brophy *v.* Bellamy, 1272
Brotherton *v.* Bury, 1127
— *v.* Harris, 417
— *v.* Hellier, 843, 846
Brougham (Lord) *v.* Poulett, 1927
Broughton *v.* Broughton, 1761, 1762, 1764
— *v.* Randall, 1073
Brouncker *v.* Bagot, 598
Brown's Trusts, *Re*, 937, 957, 1319
— Will, *Re*, 1143
Brown, Ex parte, 1898
— In the goods of, 153, 190, 194, 319, 498
— *v.* Allen, 1223
— *v.* Brown, 134, 136, 137, 153, 286, 319, 1222
— *v.* Burdett, 1949
— *v.* Coates, 261
— *v.* Dawson, 1162
— *v.* De Tastet, 1745, 1747, 1814, 1815
— *v.* Dowthwaite, 1916
— *v.* Farndell, 1316, 1367, 1402
— *v.* Gellatly, 1245, 1248, 1250, 1252
— *v.* Gordon, 1618, 1623, 1841
— *v.* How, 1936
— *v.* Lake, 1210, 1915
— *v.* Litton, 1705
— *v.* Nicholls, 404
— *v.* Oakshott, 1327, 1341
— *v.* Peck, 1129
— *v.* Pittman, 1878
— *v.* Poyns, 205
— *v.* Selwyn, 1176, 1879, 1180
— *v.* Smith, 1272, 1274, 1393, 1397
— *v.* Southouse, 1750, 1753
— *v.* Spooner, 1771
— *v.* Temperley, 1291
— *v.* Wood, 359, 360, 492, 493, 984
— *v.* Wooler, 1121
Browne *v.* Browne, 1113
— *v.* Collins, 1601
— *v.* Cross, 1922
— *v.* Elton, 1277
— *v.* Hammond, 943, 1086
— *v.* Hope, 1075
— *v.* Lord Kenyon, 1138
Browning, In the goods of, 352
— *v.* Budd, 288, 290
— *v.* Reane, 348
Brownrigg *v.* Pike, 50, 182, 327
Brownson *v.* Lawrence, 1571
Bruce, *Re*, 1392, 1393, 1496
— *v.* Bruce, 1397
— *v.* Charlton, 1094
— *v.* Morice, 1568
Brudnel's case, 423
Bruen *v.* Bruen, 1167
Bruere *v.* Pemberton, 1751
Bruin *v.* Knott, 1274
Brummel *v.* Prothero, 1579
Brumridge *v.* Brumridge, 1735
Brunel *v.* Brunel, 1395, 1396
Brunker *v.* Cook, 4
Brunsden *v.* Woolridge, 980
Brunt *v.* Brunt, 125
Byran, *Re*, 1278, 1327
— *v.* Clay, 876
— *v.* Mansion, 1427
— *v.* Twigg, 1327, 1329
— *v.* White, 82
Bryan's Trusts, *Re* 961
Bryden *v.* Willet, 937, 975
Brydges *v.* Duchess of Chandos, 4
— *v.* Phillips, 1579, 1581
— *v.* Wotton, 1152
Bryon, *Re*, 953, 957
Bubb's case, 581
Bubb *v.* Padwick, 1091
— *v.* Yelverton, 1150
Bubbers *v.* Harby, 388
Buchan's case, 1628, 1629
Buck *v.* Norton, 930
— *v.* Robson, 1626
Buckeridge *v.* Ingram, 720
Buckinghamshire (Lord) *v.* Drury, 1361
Buckland, *Ex parte*, 857
— *v.* Butterfield, 656, 657
Buckle *v.* Fawcett, 933, 975
Buckley's Trusts, *Re*, 1266, 1268, 1293
Buckley *v.* Barber, 224, 571
— *v.* Pirk, 1520, 1635, 1636, 1637
Buckmaster *v.* Harrop, 1644
Buckworth *v.* Simpson, 1642
Budd, In the goods of, 138
— *v.* Silver, 362
Buffar *v.* Bradford, 977, 1080, 1347
Buissieres *v.* Albert, 1381, 1382, 1384
Bulgen *v.* Sage, 1909
Bulkeley *v.* Wilford, 100, 468
Bull *v.* Bull, 247
— *v.* Pritchard, 1109, 1113
— *v.* Wheeler, 1860
Bullmore *v.* Wynter, 962
Bullock, In the goods of, 407
— *v.* Bennett, 176, 179, 1141, 1143
— *v.* Downes, 983, 987, 1327, 1922, 1924, 1927
— *v.* Wheatley, 1708, 1718
Bulmer *v.* Bulmer, 705
— *v.* Hunt, 665
— *v.* Jay, 996, 998
Bulstrode *v.* Bradley, 1891
Bulwer *v.* Bulwer, 630
Bunbury *v.* Bunbury, 1801
— *v.* Hewson, 1610, 1612

Bund *v.* Green, 1351
Bunn, *Re*, 1099
— *v.* Markham, 684, 686, 691
Bunting, *Re*, 826
— *v.* Marriott, 910
Bunyan *v.* Mortimer, 1932
Burch, In the goods of, 376
Burchett *v.* Woolward, 1128
Burchmore, In the goods of, 387
Burden *v.* Burden, 1752, 1760
Burdett, In the goods of, 381
Burdick *v.* Garrick, 1753, 1755, 1922
Burdon *v.* Dean, 753
— *v.* Morgan, 446
Burge *v.* Brutton, 891, 1761
Burges *v.* Mawbey, 1080
Burgess, In the goods of, 385
— *v.* Burgess, 1150
— *v.* Marriott, 842, 844
— *v.* Robinson, 1133, 1259
Burgoyne *v.* Showler, 77, 91
Burke *v.* Jones, 1923
Burleigh *v.* Stott, 1889
Burleton *v.* Humfrey, 1143
Burley *v.* Evelyn, 587
Burls *v.* Burls, 313, 318
Burn *v.* Burn, 1621
— *v.* Cole, 301, 365
Burnaby *v.* Barsby, 917
Burne *v.* Richardson, 801
Burnell *v.* Brown, 1295
Burnet *v.* Dixe, 892
— *v.* Mann, 1367, 1380, 1383
Burnett *v.* Holden, 777, 860
— *v.* Lynch, 1632
Burney *v.* Morgan, 1918, 1919
Burnham *v.* Bennett, 747
Burnie *v.* Getting, 1055
Burrage, *Re*, 1899, 1900
Burrell, In the goods of, 385
— *Re*, 1559
Burridge *v.* Brady, 1217
Burrough *v.* Moss, 739
— *v.* Philcox, 979
Burroughs *v.* Elton, 1917
— *v.* Griffiths, 280
— *v.* Stevens, 1859
Burrowes *v.* Gore, 1927
Burrows *v.* Burrows, 15
— *v.* Cottrell, 1513
— *v.* Walls, 1729, 1739
Burt *v.* Hellyar, 979, 989
Burtenshaw *v.* Gilbert, 126, 127
Burting *v.* Stonard, 802
Burton's Will, *Re*, 1267
Burton *v.* Collingwood, 157
— *v.* Knowlton, 1580, 1581, 1582
— *v.* Mount, 1039, 1252
— *v.* Newbery, 7, 166, 1307
— *v.* Pierpoint, 677
Burton *v.* Sharp, 360
Burtt, *Re*, 830
Busfield, *Re*, 1806
Bush *v.* Cowan, 1319
Bushby *v.* Munday, 1801
Bushell, In the goods of, 294, 316
Bustard *v.* Saunders, 977
Bute, Marquis of, *v.* Cunynghame, 1570, 1572
— *v.* Harman, 1109
Butler, *Ex parte*, 560
— *Re*, 759, 1341
— *v.* Bernard, 791
— *v.* Bushnell, 988
— *v.* Butler, 539, 929, 1271, 1568
— *v.* Carter, 1928
— *v.* Duncomb, 950
— *v.* Freeman, 1268, 1292
— *v.* Gray, 1324
— *v.* Greenwood, 154
— *v.* Lowe, 942
— *v.* Stratton, 976, 1385
Butt's case, 596
Butter *v.* Ommaney, 971, 1076
Butterworth *v.* Harvey, 1106, 1138
Buxton *v.* Buxton, 1703, 1718
Byam *v.* Sutton, 604
Byde *v.* Byde, 1166, 1167
Byne *v.* Currey, 1513
Byng *v.* Byng, 633, 946
— *v.* Lord Strafford, 933, 966, 1130
Byrchall *v.* Bradford, 1256
Byrd, In the goods of, 79, 83
— *v.* Wilford, 733
Byrn *v.* Godfrey, 1542
Byrne *v.* Norcott, 1724
Byron's Settlement, *Re*, 1322
Byron *v.* Brandreth, 1053
Bywater, *Re*, 290

C

Cabell *v.* Vaughan, 1176
Cable *v.* Cable, 987
Cadbury *v.* Smith, 1895, 1896
Cadge, In the goods of, 113, 1318
Cadman *v.* Cadman, 1271, 1275
Cadogan, *Re*, 1053, 1318
Cafe *v.* Bent, 1039, 1252
Cage *v.* Russel, 1139
Caldecott *v.* Caldecott, 1040, 1245, 1246, 1249, 1253
— *v.* Harrison, 964
Calder *v.* Rutherford, 1615
Caldicott *v.* Smith, 1384
Caldwell *v.* Fellowes, 1341
Callaghan *v.* Callaghan, 1658
Callaway, In the goods of, 301
Callisher *v.* Bischoffsheim, 1219
Callow *v.* Callow, 1056
Calmady *v.* Calmady, 672, 675, 677

Calthorpe *v.* Gough, 1084
Calvert *v.* Sebbon, 1514
Caly *v.* Joslin, 1634, 1636
Cambiaso *v.* Negrotto, 459
Cambridge *v.* Rous, 1046, 1078, 1125, 1319, 1330
Camden *v.* Fletcher, 213
Camoys *v.* Blundell, 1011
Campanari *v.* Woodburn, 1599
Campbell's Trusts, *Re*, 1385
Campbell, *Ex parte*, 1919
— In the goods of, 441, 461
— *v.* Beaufoy, 303, 476, 1389
— *v.* Brownrigg, 1138, 1155
— *v.* Campbell, 886, 1167, 1200, 1767
— *v.* French, 147, 1283
— *v.* Graham, 1031, 1171, 1297
— *v.* Lucy, 479, 480
— *v.* Lord Netterville, 1145
— *v.* Prescott, 1040, 1048
— *v.* Radnor (Lord), 475, 1157 1160, 1894
Campion *v.* Cotton, 665, 677
Candler *v.* Tillett, 1728, 1734
Candy *v.* Campbell, 966
Canning *v.* Hicks, 602
Cannings *v.* Flower, 1270
Canterbury, Abp. of, *v.* House, 404
— *v.* Robertson, 458, 1358
— *v.* Tappen, 1353
Capdevielle, *Re*, 1395, 1502
Caplin, *Re*, 981
Capron *v.* Capron, 731
Cardale *v.* Harvey, 413
Careless *v.* Careless, 1015
Carew *v.* Burgoyne, 741
Carey *v.* Askew, 1258, 1307
— *v.* Goodinge, 1179, 1180
Carlyon, *Re*, 1904
Carmichael, In the goods of, 402, 1073
— *v.* Carmichael, 216, 219
— *v.* Gee, 1212, 1213, 1259
— *v.* Hughes, 1273
— *v.* Wilson, 1264, 1275
Carne *v.* Brice, 661
— *v.* Long, 920
Carpenter *v.* Bott, 982
— *v.* The Queen's Proctor, 463
— *v.* Shelford, 379
Carr's Trusts, *Re*, 1278
Carr, In the goods of, 414
— *v.* Carr, 1063
— *v.* Eastabrooke, 1163, 1279
— *v.* Lord Errol, 637
— *v.* Ingleby, 1221
— *v.* Roberts, 539, 541, 1794
— *v.* Taylor, 753, 1175, 1283
Carron Iron Co. *v.* Maclaren, 368, 853, 1389, 1801
Cart *v.* Hodgkin, 700
— *v.* Rees, 349, 755, 1358
Carte *v.* Carte, 1192
Carter *v.* Barnardiston, 605
— *v.* Bentall, 933, 975
— *v.* Crawley, 361, 1352, 1366, 1384
Carter *v.* Crofts, 296
— *v.* Green, 916, 922
— *v.* Taggart, 1281, 1320
Cartwright's case, 362, 416
Cartwright, *Re*, 1605
— *v.* Cartwright, 16, 18, 1129
— *v.* Shepheard, 1691
— *v.* Vawdry, 953, 957
Carver *v.* Bowles, 1194, 1302
— *v.* Burgess, 1330
Cary *v.* Abbot, 901, 902
— *v.* Appleton, 677
— *v.* Hills, 216, 1912
— *v.* Stephenson, 1785
Casement *v.* Fulton, 74, 79
Casmore, In the goods of, 69
Cassidy, In the goods of, 376, 407, 438
Casson *v.* Dade, 80
Castle *v.* Fox, 178, 1069, 1302
— *v.* Warland, 1721, 1732
Castleton *v.* Fanshaw, 1699
Castrique *v.* Imrie, 1392
Catchside *v.* Ovington, 848
Catherwood *v.* Chabaud, 569, 764, 792, 831, 1794
Catley *v.* Sampson, 1560
Caton *v.* Coles, 1605
— *v.* Rideout, 668
Cator *v.* Cator, 932
Catt's Trust, *Re*, 1139
Cattell *v.* Simons, 1210, 1919
Catlin *v.* Brown, 1116
Cattrall, In the goods of, 73
Cavan *v.* Pulteney, 1307
Cave *v.* Cave, 647
— *v.* Roberts, 370, 1360, 1387
Cavendish *v.* Cavendish, 1719
Caweth *v.* Phillips, 1178
Cawthorn, In the goods of, 158
Cawthorne, *Re*, 1433, 1820
— *v.* Chalie, 380
Chadwick *v.* Doleman, 947, 948, 949
Chadwin, *Ex parte*, 1216
Chaffe *v.* Kelland, 1834
Chaffers, *v.* Headlam, 1880
Challen *v.* Shippam, 1721
Challoner *v.* Challoner, 1866
Chalmer *v.* Bradley, 567
Chalmers *v.* North, 988
— *v.* Storil, 1054
Chamberlain, In the goods of, 498

Chamberlain *v.* Chamberlain, 1205, 1313, 1797
— *v.* Williamson, 709, 710, 714, 715
Chambers, *Ex parte*, 1275
— *v.* Bicknell, 376, 377
— *v.* Brailsford, 933, 936
— *v.* Chambers, 1040, 1252
— *v.* Goldwin, 1269, 1291, 1292, 1767
— *v.* Howell, 807
— *v.* Kingham, 562
— *v.* Leversage, 1669
— *v.* Minchin, 1730, 1731, 1732
— *v.* The Queen's Proctor, 20, 21, 29, 92
— *v.* Smith, 1759
Chamney, In the goods of, 84
Champion, *Ex parte*, 1709
Champney *v.* Davy, 913, 920, 1320
Chancellor, *Re*, 1248, 1252
Chancey's case, 1164, 1166
Chandler *v.* Thompson, 801
Chandos, Duke of, *v.* Talbot, 1119, 1121
Channel *v.* Ditchburn, 1889
Channon *v.* Patch, 622
Chanter, In the goods of, 382, 447
Chapman's Trusts, *Re*, 1450, 1455
Chapman, *Re*, 1807
— *v.* Brown, 913, 925
— *v.* Chapman, 992, 993, 1045, 1046
— *v.* Dalton, 767, 768, 769, 1519
— *v.* Day, 783
— *v.* Esgar, 1549
— *v.* Hart, 1041, 1190
— *v.* Mason, 1778, 1910
— *v.* Reynolds, 1052
— *v.* Rothwell, 706
— *v.* Turner, 888, 894
Chappell *v.* Chappell, 354
Chapple, *Re*, 1762, 1942
Charge *v.* Goodyer, 965
Charitable Donations, Commissioners of, *v.* Devereux, 1395, 1501
— *v.* Wybrants, 1927
Charles *v.* Burke, 1323
— *v.* Jones, 1938
Charlton *v.* Att.-Gen., 1447, 1448, 1450
— *v.* Coombes, 1743
— *v.* Durham, 816
— *v.* Low, 1694, 1896, 1897
— *v.* Hindmarsh, 428
— *v.* West, 1163, 1166
— *v.* Wright, 1532
Charter *v.* Charter, 312, 1011, 1012, 1013, 1014
Chaston, *Re*, 1082, 1090, 1091
Chatfield *v.* Berchtoldt, 1422, 1501, 1541
Chatteris *v.* Young, 1083, 1162, 1512
Chauncey *v.* Graydon, 772, 1146
Chaworth *v.* Beech, 1030
— *v.* Hooper, 1293
Checkley *v.* Checkley, 739
Cheese *v.* Lovejoy, 115
Chelsea Waterworks, Governors of *v.* Cowper, 1206, 1857
Chennell, *Re*, 1941
Cherry *v.* Boultbee, 993, 1172, 1173
— *v.* Mott, 924
Chesham, *Re*, 1307, 1311
Cheshire Banking Co., *Re*, 1629
Chester's, Lady case, 831
Chester *v.* Chester, 1344
— *v.* Urwick, 109, 1171
Chesterfield's Trusts, *Re*, 1249, 1251
Chevalier *v.* Finnis, 1797
Chevaux *v.* Aislabie, 1096
Cheyney *v.* Smith, 1234
Chichester *v.* Bickerstaff, 583
— *v.* Coventry, 1167, 1168, 1196
Chilcot *v.* Bromley, 1007
Child *v.* Giblett, 1127
— *v.* Gibson, 1752
— *v.* Thorley, 803
Childs *v.* Monins, 1671
Chinery, *Re*, 1077
Chipchase *v.* Simpson, 978
Chippendale *v.* Thurston, 1839
Chissum *v.* Dewes, 887
Chittenden *v.* Knight, 363
Cholmeley *v.* Cholmeley, 679
Cholmondeley, *Re*, 1412, 1482
— *v.* Lord Ashburton, 983
Cholwill, In the goods of, 385
Christian, In the goods of, 82
— *v.* Devereux, 539, 1147, 1924
Christie *v.* Gosling, 638
Christmas, *Re*, 908
— *v.* Whinyates, 114, 122
Christophers *v.* White, 1761
Christopherson *v.* Naylor, 1076, 1077
Christ's Hospital *v.* Budgin, 669
Christy *v.* Courtenay, 1549
Church Building Society *v.* Barlow, 916
Church *v.* Kemble, 1305
Churchill, *Re*, 893
— *v.* Bank of England, 721
— *v.* Bertrand, 1665
— *v.* Hobson, 1720, 1728, 1731, 1740
Churchman *v.* Ireland, 1308
Cigale's Settlement, *Re*, 1446
Clabburn, *Re*, 1937
Clack *v.* Carlon, 1943
— *v.* Holland, 1702
Clancy *Re*, 912, 914
Clapton *v.* Bulmer, 988
Clare *v.* Clare, 1939
— *v.* Hedges, 433, 438

Clarendon (Lord) *v.* Barham, 1566
Clarges *v.* Albemarle, 679
Clark, In the goods of, 72, 265
Clarke's Estate, *Re*, 1323
Clark's Trust, *Re*, 921, 1138
Clark, *Re*, 899
— *v.* Browne, 1186
— *v.* Burgh, 611
— *v.* Clark, 807, 1748
— *v.* Hooper, 1787
— *v.* Ross, 1120
— *v.* Sewell, 1164, 1287
Clarke, In the goods of, 65, 298
— *Re*, 729, 1275
— *v.* Berkeley, 1143, 1145
— *v.* Bickers, 1615, 1622
— *v.* Burgoine, 1194
— *v.* Butler, 1035
— *v.* Clarke, 942, 944
— *v.* Colls, 953
— *v.* Crofts, 783
— *v.* Franklin, 587
— *v.* Gould, 1058
— *v.* Hayne, 988
— *v.* Hougham, 763, 766, 1707
— *v.* Lear, 22
— *v.* Lord Ormonde, 639, 1303, 1802
— *v.* Parker, 1142, 1143, 1146
— *v.* Scripps, 111, 116, 121
— *v.* Taylor, 924
Clarkington, In the goods of, 383
Clarkson *v.* Clarkson, 125
— *v.* Waterhouse, 313
Clavering *v.* Ellison, 1123, 1129
— *v.* Yorke, 687
Clay *v.* Pennington, 973
— & Tetley, *Re*, 575, 577, 1695
— *v.* Willis, 579, 1548, 1549
Clayton, In the goods of, 386
— *v.* Gresham, 1804
— *v.* Lord Nugent, 1013, 1015
— *v.* Low, 1331
Cleare *v.* Cleare, 282, 288, 289, 312
Cleaver *v.* Spurling, 1139
Clegg *v.* Rowland, 1207, 1822, 1918
Cleland *v.* Cleland, 753
Clement *v.* Cheesman, 687
Clements *v.* Hall, 573
Clementson *v.* Gandy, 1305, 1306
Clennell *v.* Lewthwaite, 1347, 1348
Cleoburey *v.* Beckett, 154
Clerk *v.* Withers, 780
Clerke *v.* Clerke, 385
Clerkson *v.* Bowyer, 602
Cleverley *v.* Brett, 1857
Cleverly *v.* Gladdish, 458
Cliffe's Trusts, *Re*, 482
Clifford *v.* Arundell, 1045
— *v.* Beaumont, 1140, 1146
Clifton *v.* Burt, 1211, 1224, 1588, 1592
Clifton *v.* Goodbun, 957, 958
Climie *v.* Wood, 642
Cline's Estate, *Re*, 732
Clinton's Trusts, *Re*, 938
Clive *v.* Clive, 1285, 1303, 1649
Cloberry *v.* Lampen, 1254
Clogstoun *v.* Walcott, 132
Clough *v.* Bond, 1708, 1709, 1723, 1743
— *v.* Wynne, 1058
Clowes *v.* Clowes, 1324
Cloyne, Bishop of, *v.* Young, 1348, 1349
Cluff *v.* Cluff, 910
Clutterbuck *v.* Clutterbuck, 1582
— *v.* Edwards, 1114
Coales, *Re*, 1500
Coates *v.* Coates, 1171
— *v.* Hart, 937
Cobb *v.* Carpenter, 1604
Cobbett *v.* Clutton, 795
Cobham *v.* Dalton, 1899
Cochrane *v.* Robinson, 1204
Cock *v.* Cooke, 94, 95, 96
Cock *v.* Cross, 1181
Cockayne, In the goods of, 131
— *v.* Harrison, 1253
Cockburn *v.* Raphael, 1768
Cockcroft, *Re*, 1573, 1575, 1643
Cocke *v.* Jenner, 1537, 1696
Cockerell *v.* Barber, 1150, 1297
Cockerill *v.* Kynaston, 760
Cocking *v.* Pratt, 1357
Cockraft *v.* Rawles, 40
Cockran *v.* Cockran, 1024, 1252
Cockroft *v.* Black, 889
Cocksedge *v.* Cocksedge, 1129
Cogan *v.* Stephens, 585
Coghill *v.* Freelove, 1630, 1631, 1633
Coghlan *v.* Coghlan, 22
Cogswell *v.* Armstrong, 1319
Cohen *v.* Waley, 1138
Colberg, In the goods of, 118
Calborne *v.* Wright, 414
Cole *v.* Fitzgerald, 1045, 1048, 1050
— *v.* Miles, 817, 819, 1230
— *v.* Muddle, 806
— *v.* Rea, 379
— *v.* Scott, 175, 179, 1024, 1299, 1302
— *v.* Wade, 829, 939, 981
— *v.* Willard, 1163, 1166
Colbeck *v.* Peck, 777, 860
Coleby *v.* Coleby, 1572, 1681
Colegrave *v.* Dias Santos, 649
— *v.* Manby, 1192, 1657
Coleman, In the goods of, 116
— *Re*, 1081
— *v.* Coleman, 1030
Coles, In the goods of, 94, 96, 381
— *v.* Coles, 287
— *v.* Haden, 781
— *v.* Trecothick, 66

Coles's Will, *Re*, 1510
Colgan, *Re*, 1271
Collen *v.* Wright, 1603
Colleton *v.* Garth, 1190, 1361
Collett, In the goods of, 190
— *v.* Collett, 1144, 1146
— *v.* Lawrence, 939
Colley's Trusts, *Re*, 1081, 1339
Collier, In the goods of, 437
— *v.* Rivaz, 304, 1387
— *v.* Squire, 1045
Colling, *Re*, 1646
Collingwood *v.* Pase, 359, 984, 1381
— *v.* Stanhope, 947, 948, 950
Collins, In the goods of, 317
— *Re*, 1270, 1271
— *v.* Carey, 1761
— *v.* Collins, 1039, 1054, 1252
— *v.* Crouch, 872, 1640
— *v.* Doyle, 1064
— *v.* Lewis, 1589
— *v.* Macpherson, 1087
— *v.* Martin, 1042
Collinson *v.* Lister, 806, 1690, 1724, 1897
— *v.* Pater, 909
Collis *v.* Blackburn, 1268, 1273
— *v* Robins, 1578, 1579, 1582, 1814
Collison, *Re*, 1091
— *v.* Curling, 1029
— *v.* Girling, 1070
Colman, *Ex parte*, 1898
— In the goods of, 80
Colson's Trusts, *Re*, 1255
Colston *v.* Morris, 1242
Colverson *v.* Bloomfield, 1931, 1933
Colvile *v.* Middleton, 1583
Colvin *v.* Fraser, 133, 134, 135, 314, 430, 498, 499
— *v.* Procurator-General, 1073
Colyer, In the goods of, 94
— *v.* Finch, 577
Combe's Case, 33, 813
Combe *v.* Hughes, 947
Comber's case, 250
Comfort *v.* Brown, 967
Compton, *Re*, 886, 891
— *v.* Bloxham, 483, 1147, 1150
— *v.* Collinson, 59
— *v.* Sale, 1163
Concha *v.* Concha, 465, 476
— *v.* Murrieta, 1879
Conduitt *v.* Soane, 1253
Congreve *v.* Congreve, 943
— *v.* Palmer, 1386
Connop *v.* Hayward, 1893
Connor *v.* Martin, 739
Conron *v.* Conron, 1033, 1584
Consett *v.* Bell, 622, 1917
Constable *v.* Bull, 1131
— *v.* Constable, 731
Constable *v.* Tufnell, 34, 39, 40
Constantine *v.* Constantine, 934
Conway *v.* Fenton, 1825
Conyers *v.* Kitson, 354
Coode, In the goods of, 300, 366
Cook *v.* Bolton, 1915
— *v.* Collingridge, 1748, 1815
— *v.* Dawson, 576
— *v.* Gregson, 853, 854, 1548
— *v.* Lambert, 69
— *v.* Martyn, 1895
— *v.* Whitley, 956
Cooke, In the goods of, 121, 319, 384
— *v.* Bowler, 1058
— *v.* Colcraft, 1597
— *v.* Crawford, 830
— *v.* Dealey, 585
— *v.* Farrand, 1303
— *v.* Fuller, 1276
— *v.* Mirehouse, 936
— *v.* Stationers' Co., 923
— *v.* Turner, 1138, 1739
— *v.* Wagster, 1052, 1054
Cookson *v.* Bingham, 1327, 1947
Coombe *v.* Trist, 1478
Coombs, In the goods of, 68, 259, 378
— *v.* Coombs, 378, 895
Coope *v.* Cresswell, 1554, 1555, 1556, 1557, 1839
Cooper's Trusts, *Re*, 587
Cooper, In the goods of, 48, 159
— & Allen's Contract, *Re*, 1457
— *v.* Bockett, 76, 77, 79, 93, 102
— *v.* Cooper, 1109, 1305, 1310, 1331
— *v.* Day, 1162, 1511
— *v.* Denison, 985, 988
— *v.* Douglas, 1709
— *v.* Jarman, 1598
— *v.* Johnson, 782
— *v.* Macdonald, 348, 1195
— *v.* Mantell, 1155, 1192
— *v.* Pitcher, 1313
— *v.* Simmons, 723, 1650
— *v.* Thornton, 991, 1261, 1262, 1263
— *v.* Vesey, 806
— *v.* Woolfitt, 627
— *v.* Wormald, 666
— *v.* Wyatt, 1131
Coore *v.* Todd, 1224
Coote *v.* Boyd, 1155, 1157, 1159
— *v.* Coote, 1578, 1582
— *v.* Whittington, 216, 1912, 1914, 1915
Cope, In the goods of, 83, 458
— *Re*, 423, 434, 1937
— *v.* Cope, 1562
Copeland *v.* Stephens, 1659
Copley *v.* Copley, 1167
Coppard, *Re*, 943

Coppard *v.* Allen, 1913, 1914
Coppin *v.* Coppin, 1219, 1312
— *v.* Dillon, 131, 363, 460
— *v.* Fernyhough, 173
— *v.* Potter, 738
Corbett's Trusts, *Re*, 1334
Corbyn *v.* French, 913, 993, 1074
Cord *v.* Cord, 1801
Corder, *Re*, 72
Cordeux *v.* Trasler, 363
Cordwell's Estate, *Re*, 1171, 1278, 1846
Corlass, *Re*, 974
Cormack, In the goods of, 459
— *v.* Copous, 947
Corneby *v.* Gibbons, 72
Corneck *v.* Wadman, 1330, 1331
Corner *v.* Shew, 1663, 1666, 1674, 1678, 1679, 1681
Cornewall *v.* Cornewall, 1564
Cornfield *v.* Wyndham, 1062
Cornwall, Solicitor of Duchy of, *v.* Canning, 372, 458
— *v.* Cornwall, 1050
Cornwallis, *Re*, 638, 1139
— (Earl), *Re*, 1413
Corporation of Clergymen's Sons *v.* Swainson, 1894
Corrie's Will, *Re*, 974, 975, 1079, 1162
Corsellis, *Re*, 1763, 1943
Corser, *Ex parte*, 857
Corser *v.* Cartwright, 577, 578
Cort *v.* Winder, 1081
Corven's case, 635, 639
Coryton *v.* Litheby, 1663, 1774
Cosnahan, In the goods of, 301, 306, 384
— *v.* Grice, 681
Costeker *v.* Horrox, 1883
Coswall *v.* Morgan, 445
Cother *v.* Merrick, 725
Cotteen *v.* Missing, 1658
Cottle *v.* Aldrich, 215
Cotton, *Re*, 1267, 1324
— *v.* Cotton, 996, 1001
— *v.* Iles, 603
Cottrell's Estate, *Re*, 1274
— *v.* Cottrell, 141
— *v.* Hughes, 1543
Couch *v.* Stratton, 1364
Coulter's case, 217, 220, 222, 502
Coulthart *v.* Clementson, 1660
Coulthurs *v.* Carter, 1078
Court *v.* Buckland, 586
Courtenay *v.* Williams, 1171, 1172
Courtney *v.* Ferrers, 1302
Courtoy *v.* Vincent, 1509
Cousins, *Re*, 573
— *v.* Paddon, 1847, 1862
— *v.* Schroder, 1105
Coussmaker *v.* Chamberlayne, 402, 403
Coventry *v.* Chichester, 1167
— *v.* Coventry, 851, 941, 1255, 1565, 1583
Covell, In the goods of, 494
— *v.* Higgins, 1290
— *v.* Williams, 96
Coward, in the goods of, 59
— *v.* Gregory, 1601, 1872
Cowell *v.* Watts, 569, 763, 765
— *v.* Gatcombe, 1728
Cowley (Earle), *Re*, 1462
Cowling *v.* Cowling, 1053
Cowper *v.* Fletcher, 827
Cox's Trusts, *Re*, 729
Cox, *Re*, 913, 922
— Sir Charles, The creditors of, 1548
— *v.* Allingham, 1793
— *v.* Barnard, 870, 1658
— *v.* Bennett, 177, 1319
— *v.* Brown, 811
— *v.* Cox, 1249, 1250
— *v.* Dolman, 1927
— *v.* Godsalve, 628, 1051
— *v.* Joseph, 874
— *v.* Peacock, 1863
Crabb *v.* Crabb, 1305
Crabtree *v.* Bramble, 580
Crackelt *v.* Bethune, 1295, 1296, 1758
Cradock *v.* Owen, 1342, 1346
— *v.* Piper, 1585, 1760, 1761, 1762, 1763, 1764, 1942, 1943
Craig *v.* Lester, 45
Craigie *v.* Lewin, 302, 1395, 1397, 1400
Craik *v.* Lamb, 977, 982
Crallan *v.* Oulton, 1923
Cranley *v.* Hale, 1345
Cramer's case, 591
Cramp *v.* Playfoot, 925
Cranmer's case, 615, 1163
Cranswick *v.* Pearson, 1329
Crause, In the goods of, 351
— *v.* Cooper, 1079
Crawford's Trusts, *Re*, 993, 999
Crawford *v.* Forshaw, 235
— *v.* Trottier, 947, 967, 968, 971
— *v.* Whittal, 766
Crawhall's Trusts, *Re*, 952, 1082, 1330
Crawshaw, *Re*, 1825, 1826
— *v.* Crawshaw, 1324
Crawshay *v.* Collins, 1521, 1745
Cray *v.* Willis, 1230
Creed *v.* Creed, 1021, 1022, 1032, 1033, 1220, 1223, 1224
— *v.* Perry, 744
Cremorne *v.* Antrobus, 1049
Cresswell, *Re*, 638
— *v.* Cheslyn, 1080
— *v.* Cresswell, 402, 898, 1157
Creswick *v.* Gaskell, 1138

Crichton *v.* Symes, 1040
Crickett *v.* Dolby, 1254, 1269, 1287, 1290, 1292
Cringan, In the goods of, 195
Cripps *v.* Wolcott, 1329, 1330, 1331
Crispin *v.* Doglioni, 279, 302, 306, 307, 940
Critchell *v.* Critchell, 318
Critchett *v.* Taynton, 943
Crockat *v.* Crockat, 1022
Crockett *v.* Crockett, 947, 977, 990
Croft *v.* Croft, 77, 78, 93
— *v.* Lyndsey, 1704
— *v.* Pyke, 251, 891
Crofts, In the goods of, 54
Croggan *v.* Allen, 1949
Croker *v.* Hertford, 88, 112
Croly *v* Weld, 1212
Cromek *v.* Lumb, 1102, 1334
Crommelin *v.* Crommelin, 1145
Crompton *v.* Sale, 1197
Crone *v.* Odell, 932, 941, 943
Crook *v.* Hill, 953, 957, 958
— *v.* Whitley, 962
Crooke *v.* Brookeing, 952
— *v.* De Vandes, 978, 1326
Crookenden *v.* Fuller, 301, 1392, 1395
Cropper *v.* Knapman, 1918
Crosbie *v.* McDoul, 7, 166, 171
Crosby *v.* Geering, 1868
Crosley, In the goods of, 164
Crosman's case, 1178
Cross *v.* Cross, 314
— *v.* Maltby, 937
Crosse *v.* Cocke 893
— *v.* Smith, 1535, 1704, 1733
Crossfield *v.* Such, 553, 570
Crosskey *v.* Mills, 502
Crosskill *v.* Bower, 1749
Crossley *v.* City of Glasgow Assurance Co., 1880
Crossly *v.* Clare, 941, 976
Crossman *v.* The Queen, 519
Crosthwaite *v.* Dean, 147
Crow *v.* Robinson, 1413
Crowder *v.* Clowes, 1512
— *v.* Stewart, 885, 889, 891
— *v.* Stone, 744, 1082, 1334
Crowe *v.* Crisford, 1039, 1252
— *v.* Russell, 1910
Crowley *v.* Chipp, 458
Croxton *v.* May, 1279, 1281
Cruikshank *v.* Roberts, 1545
Crump, In the goods of, 443
Cruse *v.* Barley, 1094
Crusoe *v.* Bugby, 809
Cruwys *v.* Colman, 981, 989
Cubbidge *v.* Boatwright, 790, 806
Cubbon, In the goods of, 58, 182, 323, 327
Cuddon *v.* Cuddon, 1466
Culling *v.* Tuffnall, 641
Cumberland's (Countess of) case, 622
Cumming *v.* Fraser, 464
Cummins *v.* Cummins, 1691
Cunliffe *v.* Cross, 288
Cunningham, *Ex parte*, Mitchell, *Re*, 1398
— *v.* Foot, 1923, 1927
— *v.* Ross, 1190, 1191
— *v.* Seymour, 261
Cuno, *Re*, 56, 664
Curlewis *v.* Lord Mornington, 1790, 1845
Curling *v.* Thornton, 303, 1399
Curnick *v.* Tucker, 990
Curre *v.* Bowyer, 582, 1645, 1911
Currey, In the goods of, 386, 449, 450
Currie *v.* Bircham, 369
— *v.* Gould, 1329
— *v.* Pye, 1158, 1159
Curry *v.* Pile, 1156
Cursham *v.* Newland, 973
Curteis *v.* Wormald, 585
Curtis *v.* Blow, 1894
— *v.* Curtis, 317, 942
— *v.* Fulbrook, 575, 576
— *v.* Hunt, 1885
— *v.* Hutton, 915, 921
— *v.* Lukin, 1255
— *v.* Price, 666
— *v.* Vernon, 218, 219, 220, 555
Curtius *v.* Caledonian Fire Insurance Co., 1880
Cust *v.* Goring, 696
Custance *v.* Bradshaw, 547, 548, 549
Cutbush *v.* Cutbush, 1688
Cuthbert *v.* Purrier, 1131, 1284
Cutler, *Re*, 1277
Cutto *v.* Gilbert, 138, 139, 142, 143, 144, 171

D.

Da Costa *v.* De Pas, 902, 904
D'Aguilar *v.* Drinkwater, 1145
Dabbs *v.* Chisman, 280, 281, 362, 378, 382, 499
Da Cunha (Countess), In the goods of, 306, 365, 388, 420
Dacre *v.* Patrickson, 1344, 1345, 1572, 1576
Dadds, In the goods of, 120, 320
Dady *v.* Hartridge, 1032, 1565
Dagley *v.* Tolferry, 1261, 1262
Daintree *v.* Fasulo, 74, 76, 77, 92
Dakin *v.* Cope, 1689
Dalby, *Re*, 1874
Dalhousie *v.* M'Douall, 1393, 1398
Dallow, In the goods of, 70, 87, 89, 90
Dalrymple *v.* Hall, 953

Dalton *v.* Midland Counties Railway Company, 739
— *v.* South Eastern Railway Company, 704
Daly's Settlement, *Re*, 1398
Dalzell *v.* Welch, 932, 974
Dampier *v.* Colson, 401
Dancer *v.* Crabb, 130
Dando *v.* Dando, 1882
Daniel, In the goods of, 87
— *v.* Dudley, 994, 997, 1903
— *v.* Warren, 1039, 1252
Daniell *v.* Daniell, 1017
Darby *v.* Darby, 588
Darke, In the goods of, 184
— *v.* Martyn, 1721
Darkin *v.* Darkin, 668
Darley *v.* Darley, 1271
— *v.* Martin, 930
— *v.* Nicholson, 1933
Darling, In the goods of, 390
— *v.* Loveland, 103
Darlington, Lord *v.* Pulteney, 8
Darlow *v.* Edwards, 1009
Darrant *v.* Field, 953
Darston *v.* Lord Oxford, 882
Darthez *v.* Winter, 1878
Dashwood *v.* Bulkeley, 1144, 1145
Da Silva, In the goods of, 159, 168
Davall *v.* New River Company, 720
Davenport *v.* Coltman, 587
— *v.* Hanbury, 974, 1386
— *v.* Moss, 887
— *v.* Stafford, 1750, 1927
Davenport's Trust, 1015, 1016
Davers *v.* Dewes, 1325, 1347, 1367, 1368
David, *Re*, 908
— *v.* Frowd, 1208, 1209, 1315, 1919
Davidson, *Re*, 580
— *v.* Dallas, 941, 1111
— *v.* Kimpton, 1334
Davie *v.* Beardsham, 581
Davies' Trusts, *Re*, 1322
— Will, *Re*, 1385
— In the goods of, 77, 355
— *Re*, 1904, 1921
— (William), *Re*, 1807
— *v.* Ashford, 1575
— *v.* Austin, 1264
— *v.* Baily, 982
— *v.* Brecknell, 246
— *v.* Bush, 1219
— *v.* Churchman, 1461
— *v.* Davies, 134, 1606, 1917, 1918
— *v.* Fisher, 1096, 1097, 1100, 1110, 1111
— *v.* Fowler, 1024, 1027
— *v.* Gregory, 312
— *v.* Hodgson, 1739
— *v.* Huguenin, 947, 951
Davies *v.* Lowndes, 1788, 1845
— *v.* Monkhouse, 880
— *v.* Morgan, 1031
— *v.* Nicolson, 1202, 1209, 1314
— *v.* Queen's Proctor, 201, 321
— *v.* Reynolds, 311
— *v.* Thorne, 1330
— *v.* Wattier, 1259
— *v.* Williams, 1804
Davis, In the goods of, 77, 84, 192
— *Re*, 1924, 1925, 1941
— *v.* Andrews, 780
— *v.* Angel, 1132
— *v.* Blackwell, 1206
— *v.* Chanter, 447, 449
— *v.* Davis, 226, 1312
— *v.* Dendy, 1768
— *v.* Eyton, 630
— *v.* Gardiner, 1563
— *v.* Jenkins, 903
— *v.* Jones, 646
— *v.* to Jones, 574
— *v.* Powell, 618
— *v.* Reyner, 1670
— *v.* Salter, 1875
— *v.* Spurling, 1727, 1732
— *v.* Topp, 1592
— *v.* Williams, 1795
— *v.* Wright, 1670
Davy *v.* Pepys, 1561
Davys *v.* Boucher, 1197
Dawes, In the goods of, 428
— *v.* Scott, 1577
Dowkins *v.* Tatham, 1507
Dawley *v.* Ballfrey, 1261
Dawson *v.* Bourne, 947, 977
— *v.* Clark, 1345, 1348
— *v.* Dawson, 958, 1167, 1195
— *v.* Hearn, 1062
— *v.* Kearston, 870
— *v.* Killett, 1120
— *v.* Massey, 1750
— *v.* Oliver-Massey, 1143
— *v.* Small, 921, 925, 967
— *v.* Thorne, 1347
Day, In the goods of, 203
— *v.* Chatfield, 205
— *v.* Croft, 7, 1162
— *v.* Day, 937, 1062, 1649
— *v.* Pargrave, 739
— *v.* Radcliffe, 1115
— *v.* Smith, 18
— *v.* Thompson, 881
Dean *v.* Allen, 1204
— *v.* Crane, 1786
— *v.* Dalton, 1345
— *v.* Davidson, 264
— *v.* Gibson, 1046, 1048
— *v.* Russell, 311
Deane *v.* Teet, 1027

Deardsley *v.* Fleming, 45
De Beauvoir *v.* De Beauvoir, 967, 970, 971
Debenham *v.* Mellon, 1656
Debeze *v.* Mann, 1199
De Blaquiere *v.* Blaquiere, 735
De Bode, In the goods of, 130
De Bonneval *v.* Bonneval, 1393, 1394, 1395
De Chatelain *v.* Pontigny, 430
De Cordova *v.* De Cordova, 807, 815, 828, 1724, 1748, 1751
De Cosse Brissac *v.* Rathbone, 1392
Deeks *v.* Strutt, 243, 1670, 1828, 1952
Deering *v.* Torrington, 1542
Defflis *v.* Goldschmidt, 939, 944
De Fogassieras *v.* Dupont, 1388
D'Huart *v.* Harkness, 308
Deg *v.* Deg, 1897
De Garagnol *v.* Liardet, 1334
Deichman, In the goods of, 197
Deighton's Settled Estates, *Re*, 941
De la Farque, In the goods of, 458
De la Garde *v.* Lempriere, 1281, 1282
De Lancey, *Re*, 547, 580, 1447, 1465, 1491
— *v.* The Queen 1422
De la Rue, In the goods of, 301
De la Saussaye, In the goods of, 7, 166, 171, 300
De la Viesca *v.* Lubbock, 376
De Lisle *v.* Hodges, 1033, 1214
De Mazer *v.* Pybus, 1346
De Mora *v.* Concha, 1879
Dembyn *v.* Brown, 741
Dempsey *v.* Lawson, 139, 143
Denby *Re*, 1150
Dench *v.* Dench, 113, 294
Denne *v.* Judge, 822
Dennis, In the goods of, 168
Denny *v.* Barton, 141
Dent *v.* Allcroft, 915
— *v.* Pepys, 938
Denton *v.* Davy, 1765
— *v.* Lord John Manners, 912
Depit *v.* Delerieleuse, 381
De Praedel, In the goods of, 328
De Rechberg *v.* Beeton, 1447, 1458
De Rochfort *v.* Dawes, 1572
De Rosaz, In the goods of, 198, 1014
Desbody *v.* Boyville, 1145
Descrambes *v.* Tomkins, 1268, 1292, 1294
Des Hais, In the goods of, 298
De Tastet *v.* Andrade, 1863
— *v.* Shaw, 889
De Themmines *v.* Bonneville, 902, 904
De Trafford *v.* Tempest, 1325
Devaynes *v.* Noble, 1063, 1618
— *v.* Robinson, 1613
Devese *v.* Pontet, 1164
De Visme, *Re*, 1200
Devisme *v.* Mellish, 980
— *v.* Mello, 943
Devon, Duke of, *v.* Atkins, 1224
Dew *v.* Clark, 23, 28
De Wall's, Count, case, 1398
Dewar *v.* Brooke, 1101
Dewdney, *Ex parte*, 1700
Dewell, *Re*, 377
De Witte *v.* De Witte, 941, 947, 977
— *v.* Palin, 1271
De Zichy Ferraris *v.* Lord Hertford, 87, 89, 112, 170, 302
Dias *v.* De Livera, 942, 961, 1327
Dick, *Re*, 1710, 1713
— *v.* Lacy, 972, 978
Dicken *v.* Clarke, 1136
Dickenson *v.* Lord Holland, 1922
— *v.* Naul, 502
Dickin *v.* Edwards, 1033, 1583
Dickinson, In the goods of, 353
— *Re*, 1811
— *v.* Blisset, 13
— *v.* Moss, 39
— *v.* North Eastern Railway, 704
— *v.* Stidolph, 87, 90, 131, 142, 164
— *v.* Swatman, 130, 131, 153
Dickinson *v.* Teasdale, 1923, 1927
Dicks *v.* Lambert, 1056, 1347
Dickson, In the goods of, 272
— *Re*, 1266, 1267, 1291, 1820
Dickson's Trust, *Re*, 1138
Digby, *Ex parte*, 1566
— *v.* Boycatt, 1241
— *v.* Legard, 1192
Diggles, *Re*, 98
Dilkes, In the goods of, 68, 71
— *v.* Broadmead, 801, 1314, 1560
Dilley *v.* Matthews, 956
Dillon, *Re*, 688
— *v.* Coppin, 1372, 1374, 1658
— *v.* Harris, 87
— *v.* Parker, 1304, 1305, 1306, 1307, 1310
Dilner *v.* Leech, 1002
Dimes *v.* Dimes, 23
— *v.* Scott, 1243, 1244, 1245, 1715
Dimond *v.* Bostock, 1081
Dimsdale *v.* Dudding, 1893
Dingwell *v.* Askew, 1188
Dinning *v.* Henderson, 1560
Dinsdale *v.* Dudding, 1927
Disney *v.* Crosse, 1022
Divenny *v.* Carcoran, 300
Dix *v.* Burford, 1231, 1703, 1727, 1735, 1927
— *v.* Reed, 1149

Dixon, In the goods of, 970
— *Re*, 662, 961, 1327, 1449
— *v.* Allinson, 279
— *v.* Butler, 920
— *v.* Dawson, 587
— *v.* Dixon, 1284
— *v.* Gayfere, 580
Dobson, In the goods of, 158
— *v.* Carpenter, 1204
Docker *v.* Somes, 1753, 1758
Dodds *v.* Tuke, 1940
Dodge *v.* Meech, 313
Dodgson, In the goods of, 444, 446
Dodgson's Trusts, *Re*, 938, 1091
Dodson *v.* Sammell, 1204
Dodswell *v.* Earle, 746
Doe *v.* Aldridge, 903, 918, 922
— *v.* Bennett, 1057
— *v.* Bevan, 809, 810
— *v.* Biggs, 934
— *v.* Birkhead, 1082
— *v.* Calvert, 477
— *v.* Chichester, 1305
— *v.* Child, 933
— *v.* Clarke, 942
— *v.* Copestake, 903, 918, 923
— *v.* Cranstoun, 929
— *v.* Cross, 94, 96
— *v.* Davies, 91, 934
— *v.* Davy, 164
— *v.* Evans, 86, 148, 164, 540
— *v.* Ewart, 933
— *v.* Fallows, 805
— *v.* Featherstone, 931
— *v.* Flemming, 991
— *v.* Gallini, 931
— *v.* Glenn, 343
— *v.* Goff, 931
— *v.* Guy, 1231, 1232, 1312, 1829
— *v.* Harris, 116, 922, 1229
— *v.* Harvey, 931, 932
— *v.* Haslewood, 929
— *v.* Hawthorn, 901, 902, 919
— *v.* Hicks, 154, 167
— *v.* Hiscocks, 1013, 1015
— *v.* Hole, 165
— *v.* Hughes, 576
— *v.* Jersey, 178
— *v.* Jesson, 264, 931
— *v.* Lawson, 988
— *v.* Lyde, 599
— *v.* Mabberley, 1228
— *v.* Manifold, 80
— *v.* Marchant, 164
— *v.* Micklem, 935
— *v.* Mills, 900
— *v.* Moore, 1115
— *v.* Nepean, 264
— *v.* Nowell, 1112
— *v.* Palmer, 112, 113, 294, 295
Doe *v.* Perkes, 118
— *v.* Perratt, 930
— *v.* Pitcher, 920, 922
— *v.* Polgrean, 613
— *v.* Porter, 599, 600, 699, 762
— *v.* Pratt, 929
— *v.* Prigg, 1331
— *v.* Rawding, 934
— *v.* Reade, 932
— *v.* Rouse, 1015
— *v.* Royle, 1329
— *v.* Scott, 1134
— *v.* Shipphard, 1136
— *v.* Shotter, 574
— *v.* Smith, 933
— *v.* Strickland, 183
— *d.* Strickland *v.* Roe 1332
— *v.* Sturges, 1233, 1234, 1235
— *v.* Tatchell, 1235, 1237
— *v.* Tofield, 929
— *v.* Vardill, 1388
— *v.* Walker, 164, 165, 169
— *v.* Ward, 1112, 1113
— *v.* Waterton, 907
— *v.* Westlake, 1013
— *v.* Wheeler, 1777
— *v.* Wood, 533, 600
— *v.* Wright, 933
— *v.* Wrighte, 922
Doglioni *v.* Crispin, 940, 1387, 1391
Dolan *v.* Macdermot, 924
Dollen *v.* Batt, 597, 725
Dollond *v.* Johnson, 861
Dolman *v.* Smith, 1577, 1579, 1580
Dolphin *v.* Robins, 1398
Dommett *v.* Bedford, 1131
Domvile *v.* Winnington, 948, 949
Donaldson, In the goods of, 105, 138
Donegal's, Lord, case, 38
Donn *v.* Penny, 598, 967, 971
Donne *v.* Hart, 608
Donovan *v.* Needham, 1291
Doo *v.* Brabant, 1084, 1085, 1136
Doody *v.* Higgins, 969
Door *v.* Geary, 1067
Doran *v.* Simpson, 1916
Dorin *v.* Dorin, 953
Dorchester *v.* Webb, 235, 827, 1177, 1182
Dorner *v.* Burnett, 1299
Dormoy, In the goods of, 366
Dornford *v.* Dornford, 1296, 1702
Dornforth *v.* Dorforth, 1751
Dorville *v.* Wolff, 1330
Dost Ali Khan, In the goods of, 306
Doucet *v.* Groghegan, 1395
Douglas, *Re*, 918
— *v.* Andrews, 1082
— *v.* Chalmer, 1127
— *v.* Congreve, 931, 1053, 1243, 1244, 1245, 1507, 1513

Douglas *v.* Cooper, 51
— *v.* Douglas, 176, 179, 1301, 1302, 1395
— *v.* Fellows, 1011
Douglas *v.* Forrest, 225, 257, 1841, 1842
Dove *v.* Everard, 1737
Dover *v.* Alexander, 957
— *v.* Gregory, 1153
Dowbiggin *v.* Harrison, 777
Dowdale's case, 1524, 1525
Dowdeswell *v.* Dowdeswell, 448, 1912, 1915
Dowding *v.* Smith, 1385
Dowley *v.* Winfield, 1284
Dowling's Trust, *Re*, 1126
Dowling *v.* Tyrrell, 1287
Down *v.* Worrall, 830, 923
Downe *v.* Morris, 1560
Downes *v.* Bullock, 983, 986
— *v.* Power, 806, 1897
Downing *v.* Townsend, 1052, 1299
Downs *v.* Collins, 1500, 1683
Downward *v.* Dickinson, 381
Dowse *v.* Coxe, 1661, 1666
— *v.* Gorton, 1684, 1772, 1815, 1816, 1817, 1901, 1902
— *v.* Percival, 1544
Dowset *v.* Sweet, 1080
Dowson *v.* Gaskoin, 1053, 1317
Doyle *v.* Blake, 225, 228, 1698, 1708, 1736, 1741
Doyley *v.* Tolferry, 1264
Drage *v.* Hartopp, 1776
Drake *v.* Att.-Gen. 550
— *v.* Drake, 1012
— *v.* Martin, 1023, 1041
— *v.* Munday, 725
Drakeford *v.* Drakeford, 1081, 1330
Draper *v.* Hitch, 292
Drewry *v.* Thacker, 1802, 1862, 1893, 1911
Drinkwater, In the goods of, 385
— *v.* Falconer, 1027, 1030, 1187
Driver *v.* Ferrand, 1582
— *v.* Frank, 948
Drohan *v.* Drohan, 808
Drover *v.* Beyer, 1930, 1933
Druce *v.* Denison, 96, 611, 612, 753, 1361
Drue *v.* Baylie, 569, 790, 801
Drummond, In the goods of, 87, 327
— *v.* Parish, 104
Drury *v.* Smith, 684, 691
Drybutter *v.* Bartholomew, 720
Dryden *v.* Foster, 1908, 1910
Duane, In the goods of, 293, 315
Duberley *v.* Day, 608
Dubois *v.* Trant, 496
Duckworth *v.* Johnson, 704, 705
Dudley *v.* Warde, 640, 645, 648, 652
Dufaur *v.* Croft, 100, 289, 290
Duff, In the goods of, 87
Duff's Executor's case, 1629
Duffield *v.* Elwes, 164, 681
— *v.* Hicks, 687
Duffort *v.* Arrowsmith, 1908
Duffy's Trust, *Re*, 1283
Dufour *v.* Pereira, 107, 109
Dugdale, Re, 1129, 1130
— *v.* Dugdale, 1385, 1589
— *v.* Meadows, 1470
Duggan *v.* Kelly, 1140
Du Hourmelin *v.* Sheldon, 174, 181
Duke, *Re*, 936, 1089, 1104
— *v.* Doidge, 950
Dulwich College *v.* Johnson, 257, 1877
Dumble, Re, 1267
Dummer *v.* Pitcher, 1024, 1305
Dumpor's case, 726
Dunboyne *v.* Brander, 1223
Duncan *v.* Cashin, 668
— *v.* Duncan, 1030, 1162
— *v.* Lawson, 1388
— *v.* Watts, 1220
Duncombe *v.* Greenacre, 1278, 1279
Dundas, In the goods of, 87
— *v.* Dutens, 666
— *v.* Wolfe Murray, 1104, 1291
Dundee (Magistrates of) *v.* Morris, 925
Dungannon *v.* Smith, 1116
Dunk v. Fenner, 931, 967, 968, 1583
Dunkley *v.* Dunkley, 1278
Dunn, In the goods of, 354
— *v.* Bownas, 912, 913, 915
— *v.* Dunn, 168, 247
Dupleix *v.* De Roven, 860
Duppa *v.* Mayo, 141, 157, 164, 174, 727, 728, 1225
Duprez *v.* Veret, 307
Durance, In the goods of, 154
Durant *v.* Prestwood, 1382
Durham, Lord, *v.* Wharton, 1195, 1197
Durkin *v.* Johnstone, 328
Durnell *v.* Corkeld, 288, 289
Durour *v.* Motteux, 919, 922
Durrant *v.* Friend, 1183
Dutton, In the goods of, 131
— *v.* Crowdy, 1082
— *v.* Tayley, 1594
Dye *v.* Dye, 46
Dyer *v.* Kearsley, 1911
Dyke, In the goods of, 167
— *v.* Walford, 236, 340, 370
Dyose *v.* Dyose, 1215, 1216
Dyson *v.* Morris, 1878

E.

Eagles *v.* Le Breton, 987
Eagleton *v.* Kingston, 1717

Eames *v.* Hacon, 369, 376, 854, 1389, 1526, 1580
Earl, In the goods of, 305, 306, 385
Earle, In the goods of, 455, 459
Earle's Trust, *Re*, 164
— *v.* Bellingham, 1290
— *v.* Hinton, 1849
— *v.* Wilson, 958
Early *v.* Benbow, 7, 942, 1513
— *v.* Middleton, 942
East *v.* East, 1702, 1719
Easton *v.* Carter, 255
Eastwood *v.* Lockwood, 988
— *v.* Vinke, 1164
Easum *v.* Appleford, 1080, 1320, 1321, 1322, 1324
Eaton *v.* Barker, 1129, 1330
— *v.* Jacques, 1635
— *v.* Sanxter, 581
— *v.* Smith, 825
— *v.* Watts, 98
Eaves *v.* Hickson, 1701
Eavestaff *v.* Austin, 1224
Eccard *v.* Brook, 936, 978
Eccles, In the goods of, 385
— *v.* Cheyne, 1086
Ecclesiastical Commissioners *v.* North Eastern Railway Co., 1929
Eccleston *v.* Clipsham, 1775
Eckersley *v.* Platt, 130, 135
Eddels *v.* Johnson, 1012
Eddowes *v.* Eddowes, 944
Eden *v.* Smyth, 1170
Edgar *v.* Reynolds, 377
Edington's Trust, *Re*, 987
Edmonds, *Ex parte*, 1682, 1900
— *v.* Peake, 1721
Edmundson's Estate, *Re*, 987, 1122
Edmunds *v.* Cox, 782
— *v.* Low, 1166
— *v.* Bird, 432
— *v.* Fessey, 956, 957
— *v.* Waugh, 1068, 1928
Edrich's case, 798
Edwards *v.* Bates, 1830
— *v.* Edwards, 838, 870, 887, 975, 1126, 1885
— *v.* Freeman, 1352, 1369, 1370, 1371, 1373, 1376, 1565
— *v.* Grace, 763, 1689
— *v.* Hall, 909, 910, 912, 914, 915, 1022
— *v.* Hammond, 1112
— *v.* Harben, 211
— *v.* Jones, 682, 683, 1329
— *v.* Lowndes, 1830
— *v.* Saloway, 1075
— *v.* Tuck, 585
— *v.* Warwick (Countess of), 582
Eedes *v.* Eedes, 1280
Eeles, In the goods of, 130
— *v.* Lambert, 872, 1203
Egbert *v.* Butter, 1734
Egerton *v.* Lord Brownlow, 1123, 1129
Egg *v.* Devey, 1123
Eggington's Trusts, *Re*, 1331
Ekins' Trusts, *Re*, 669
Eland *v.* Eland, 806
Elden *v.* Keddell, 1794, 1795
Elderton, In the goods of, 376
Eldridge *v.* Burgess, 778
Elibank (Lady) *v.* Montolieu, 753, 1175, 1277, 1279
Ellcock *v.* Mapp, 1345
Ellice, In the goods of, 132
— *v.* Goodson, 448
Elliott *v.* Bishop, 642
— *v.* Collier, 755, 1358, 1375
— *v.* Davenport, 1073, 1074, 1226
— *v.* Dearsley, 1574, 1584
— *v.* Elliott, 943, 944, 1051, 1227, 1229, 1230
— *v.* Gurr, 347, 348
— *v.* Holwell, 1894
— *v.* Kemp, 253, 556, 567, 569, 573, 789
— *v.* Merriman, 806
— *v.* Smith, 1125
Ellis, In the goods of, 80
— *v.* Bowen, 1662
— *v.* Eden, 1055
— *v.* Ellis, 1269, 1292
— *v.* Griffith, 1797
— *v.* Guavas, 602
— *v.* Houstoun, 954, 957
— *v.* Selby, 923, 924
— *v.* Smith, 74, 78
— *v.* Walker, 1022, 1030
Ellison, *Ex parte*, 720
— *v.* Airep, 943
— *v.* Elwin, 744
— *v.* Thomas, 951
Elme *v.* Da Costa, 378, 382
Elms *v.* Elms, 120
Elmsley *v.* Young, 984, 985, 988
Elton *v.* Eason, 966
— *v.* Elton, 1096
— *v.* Sheppard, 1058
Elwell *v.* Quash, 817, 1834, 183
Elwes, *Re*, 1462
— *v.* Elwes, 362
— *v.* Maw, 640, 641, 643, 645, 653, 654, 655, 657
— *v.* Causton, 1033, 1214, 1224
Elwin *v.* Elwin, 1090
Elwood *v.* Christy, 250
Elworthy *v.* Sandford, 221, 222
Emanual *v.* Constable, 898
Embry *v.* Martin, 1120
Emerson *v.* Emerson, 698, 700, 701

Emerton *v.* Emerton, 489
Emery's Estate, *Re*, 942, 1019
Emery *v.* England, 950
Emes *v.* Hancock, 1120
Emmet's Estate, *Re*, 943
Emmins *v.* Bradford, 953
Emperor *v.* Rolfe, 1114
Empson *v.* Soden, 625
Emuss *v.* Smith, 178
England, *Re*, 1264, 1275
— *v.* Tredegar, 1204
English, In the goods of, 95, 291
— *v.* Ord, 915
Eno *v.* Tatham, 1571
Enohin *v.* Wylie, 297, 301, 302, 305, 306, 307, 368, 940, 1387, 1389, 1390, 1391
Errat *v.* Barlow, 1270
Errington *v.* Chapman, 1294
— *v.* Evans, 1179
Erskine's Trust, *Re*, 1278
Erving *v.* Peters, 1847, 1866, 1867
Escot, In the goods of, 385
Essington *v.* Vashon, 1064
Etheridge *v.* Wormsley, 1803
Eton Coll. *v.* Beauchamp, 1594
Eustace, In the goods of, 152
Euston (Earl of), *v.* Seymour, 105
Evans, In the goods of, 428
— *Re*, 1481, 1488, 1518, 1682, 1816, 1901
— (Evans), *Re*, 1886, 1887
— *v.* Brown, 1560, 1592
— *v.* Burrell, 367
— *v.* Charles, 1002, 1366
— *v.* Davies, 956 957
— *v.* Evans, 1082, 1331, 1332, 1582
— *v.* Harris, 944
— *v.* Jackson, 809
— *v.* Jones, 259, 974, 1320, 1386
— *v.* Knight, 22
— *v.* Massey, 958
— *v.* Roberts, 623, 624, 625
— *v.* Rosser, 1141
— *v.* Scott, 1115, 1120
— *v.* Tripp, 1020
— *v.* Tweedy, 1923
— *v.* Tyler, 188, 442
— *v.* Walker, 1059, 1060
— *v.* Williams, 863
— *v.* Wyatt, 1573
Evelyn, *Ex parte*, 442
— *v.* Evelyn, 361, 1381, 1566, 1567, 1568
Everall *v.* Browne, 1048
Everett *v.* Everett, 175
Ewen *v.* Franklin, 86
Ewer *v.* Corbet, 802
Ewin, *Re*, 544, 1388, 1496, 1500, 1501
Ewing, In the goods of, 299, 400, 403, 418, 419, 542
Ewing *v.* Orr-Ewing, 369, 1389, 1390, 1391, 1527, 1528
Exel *v.* Wallace, 1105
Exmouth, *Re*, 638, 1124, 1129
Explorer, The, 703
Eynon, In the goods of, 83
Eyre *v.* Cox, 1806, 1907
— *v.* Marsden, 937, 1082, 1946
— *v.* Lady Shaftsbury, 411

F.

FAIRCLOUGH *v.* Marshall, 1777
Fairer *v.* Park, 1034, 1165
Fairfax (Lord) *v.* Lord Derby, 798
Fairfield *v.* Bushell, 975
Fairland *v.* Percy, 1682
Fairweather, In the goods of, 386
Falkner *v.* Butler, 962, 1320
— *v.* Grace, 1583
Fane *v.* Fane, 1949
Faraday, In the goods of, 349
Farhall *v.* Farhall, 1664, 1900
Farley *v.* Briant, 1554
Farman, *Re*, 1658, 1903
Farmer *v.* Francis, 1089, 1113
— *v.* Mills, 1213, 1215
Farnham *v.* Phillips, 1196
Farquhar, In the goods of, 106
— *v.* Haddon, 1647
Farquharson *v.* Cave, 685, 1481
— *v.* Floyer, 1589
Farr *v.* Newman, 558, 559, 560, 561, 564, 801, 805, 1866
— *v.* Pearce, 1521
Farrands, In the goods of, 384, 386
Farrant *v.* Nichols, 975
Farrar *v.* Barraclough, 1705
Farrell *v.* Brownbill, 386
Farrer *v.* Barker, 1114, 1115
— *v.* St. Catharine's College, 96, 167, 171, 1011, 1013, 1515
— *v.* Winterton, 582, 1193, 1645
Farrington *v.* Knightly, 182, 1346
Farrow *v.* Austin, 1944
Farrow *v.* Wilson, 697
Farwell *v.* Seale, 1506
Faulding's Trust, *Re*, 1078
Faulds *v.* Jackson, 77, 79
Faulkner *v.* Daniel, 448
Faversham (Mayor of) *v.* Ryder, 915, 918
Fawcett, In the goods of, 428
— *v.* Jones, 288, 292
Fawkes *v.* Gray, 1241
Fawkener *v.* Jordan, 192, 402, 418
Fawtry *v.* Fawtry, 353
Fazakerley *v.* Gillibrand, 1167
Fearns *v.* Young, 1242, 1248, 1815
Fearnside *v.* Flint, 1925
Fearon, *Ex parte*, 473

Featherstone's Trusts, *Re*, 1081
Featherstonhaugh *v.* Fenwick, 1521
Fell *v.* Biddolph, 1081
— *v.* Lutwidge, 342, 1936
Fellows *v.* Thornton, 1798
Feltham's Trust, 1011, 1012
Feltham *v.* Feltham, 1254
Felton's Executors Case, 1600
Fendall *v.* May, 781
Fenn *v.* Death, 952
Fenner *v.* Taylor, 1281
Fenton, In the goods of, 233, 445, 449
— *v.* Clegg, 251, 1233, 1238
— *v.* Wills, 1591, 1948
Fenwick, In the goods of, 138, 160
— *v.* Clarke, 1314, 1721
— *v.* Thornton, 1796
Fereyes *v.* Robertson, 1577
Ferguson *v.* Gibson, 889, 893, 1558
— *v.* Mahon, 861
— *v.* Davie *v.* Ferguson-Davie, 95, 96
Fernandes' Executors' case, 542, 1530
Fernandez, In the goods of, 459
Fernie, In the goods of, 184
Ferrand *v.* Prentice, 1256
Ferrers *v.* Ferrers, 1290
Ferrey *v.* King, 282, 312
Ferrier, In the goods of, 493, 497
Ferris *v.* Goodburn, 1169
Festing *v.* Allen, 1104, 1109, 1112, 1113, 1290, 1292
— *v.* Taylor, 1508
Fettyplace *v.* Gorges, 53, 347
Field *v.* Moore, 1565
— *v.* Mostin, 1166
— *v.* Peckett, 1048, 1070, 1698, 1759
Fielden *v.* Ashworth, 980, 1002
Fielder *v.* Hanger, 353, 413
Fielding *v.* Preston, 1037, 1221, 1224
Finch's (Sir Moyle) case, 424
Finch, *Re*, 1658
— *v.* Finch, 135, 615, 1167
— *v.* Hattersley, 578
— *v.* Hollingworth, 981
— *v.* Lane, 1113
— *v.* Shaw, 1585
— *v.* Squire, 908, 910
Fincham *v.* Edwards, 14
Findlay, In the goods of, 885
Finlason *v.* Tatlock, 969
Finlay *v.* Chirney, 709, 1597
Finney *v.* Grice, 1049
Fincucane *v.* Gayfere, 276
Finsbury Savings' Bank, &c., Trustees of, *Ex parte*, 1887
Fischer *v.* Popham, 75, 78
Fish *v.* Richardson, 1669
Fisher *v.* Brierley, 1162, 1288, 1512
— *v.* Dixon, 645, 653
Fisher *v.* Fisher, 315, 1576, 1591
— *v.* Forbes, 631
— *v.* Hepburn, 1048
Fisk *v.* Att.-Gen., 924, 295
Fitch *v.* Weber, 584
Fittock, In the goods of, 366
Fitzgerald *v.* Boehm, 787
— *v.* Field, 1050, 1115, 1579
Fitzherbert *v.* Shaw, 646
Fitzroy, In the goods of, 160
— *v.* Howard, 1518, 1538, 1540
— *v.* Richmond, 1081
Fitzsimons *v.* Fitzsimons, 1305
Fitzwilliam *v.* Kelly, 1035, 1647
Flack *v.* Holm, 1933
Flamank, *Ex parte*, 591
Flanders *v.* Clarke, 821
Fleck, *Re*, 1574
Fleet *v.* Holmes, 843
— *v.* Perrins, 740, 756
Fleetwood, *Re*, 329, 330, 331, 1047, 1350, 1351
Fleming *v.* Brook, 1041, 1042, 1043
— *v.* Buchanan, 1550, 1558, 1592
— *v.* Burrows, 1046, 1317
— *v.* Fleming, 1013
— *v.* Pelham, 354
Flemings *v.* Jarrat, 214
Fletcher, *Re*, 1163, 1166, 1199, 1200
— *v.* Ashburner, 579
— *v.* Rodgers, 1801
— *v.* Stevenson, 1204
— *v.* Walker, 1721
Flinn *v.* Jenkins, 1386
— *v.* Perkins, 777
Flint *v.* Warren, 584
Flockton *v.* Bunning, 1744
Flood *v.* Patterson, 1827, 1915
Florance *v.* Florance, 45
Flower, *Re*, 1251
Flud *v.* Rumcey, 1179
Foden *v.* Finney, 1277
— *v.* Howlett, 1551
Foley *v.* Brogan, 282
— *v.* Burnell, 938, 1253
— *v.* Hill, 1922
— *v.* Percival, 581
Foljambe *v.* Willoughby, 1278
Folkes *v.* Docminique, 457
Follett *v.* Pettman, 7, 167, 171
Fonereau *v.* Fonereau, 1098
— *v.* Poyntz, 1212, 1215
Fontaine *v.* Tyler, 1320, 1028
Foord *v.* Pomroy, 742
Forbes *v.* Ball, 981
— *v.* Forbes, 830, 1393, 1394, 1395, 1397, 1398
— *v.* Gordon, 157
— *v.* Lawrence, 1156
— Moffat, 604

Forbes *v.* Peacock, 575, 576, 825
— *v.* Phipps, 758
— *v.* Ross, 1708, 1750, 1752, 1754
— *v.* Smith, 1791
— *v.* Steven, 548
Ford *v.* Batley, 1062
— *v.* De Pontes, 154, 1193
— *v.* Fleming, 1031
— *v.* Ford, 934
— *v.* Rawlins, 1096
— *v.* Ruxton, 1510
— *v.* Tynte, 619
Forest, In the goods of, 316
Forfar *v.* Heastie, 288
Forrest *v.* Prescott, 1576, 1582
Forrester *v.* Leigh, 1032
Forsbrook *v.* Forsbrook, 931
Forse and Hembling's case, 107
Forsight *v.* Grant, 1164
Forster *v.* Forster, 286
Forth *v.* Chapman, 933, 967
— *v.* Stanton, 1666, 1672
Fosbrooke *v.* Balguy, 1518, 1749
Foster, In the goods of, 197
— *v.* Banbury, 898
Foster *v.* Bates, 553
— *v.* Blakelock, 1855
— *v.* Claggett, 781
— *v.* Cook, 1134, 1589
— *v.* Evans, 1168
— *v.* Foster, 135, 319, 1893
— *v.* Handley, 1559
— *v.* Jackson, 1835
— *v.* Ley, 1427, 1492, 1510
Fotherby *v.* Pate, 425
Fothergill *v.* Kendrick, 865
Foubert *v.* Cresseron, 98
Fourdrin *v.* Gowdey, 1165, 1583
Fowler *v.* Davies, 1805
— *v.* Fowler, 925, 1163, 1164, 1169
— *v.* Garlike, 924
— *v.* Roberts, 1863
— *v.* Willoughby, 1021, 1032
Fowler's Trusts, *Re*, 1305
Fowlis *v.* Davidson, 28, 322
Fox *v.* Fisher, 559
— *v.* Fox, 1098, 1099, 1100, 1101, 1102, 1370
— *v.* Garrett, 892
— *v.* Hawks, 670
— *v.* Lownds, 916
— *v.* Waters, 1796
Foxwith *v.* Tremaine, 190
Foxwist *v.* Tremaine, 185, 762
Foy *v.* Foy, 917
Fozard, In the goods of, 455
Francis', Alice, case, 202
Francis *v.* Grover, 1927
Franco *v.* Alvares, 1930
Franklin's Charity, *Re*, 1493, 1494
Franklin *v.* Bank of England, 721
— *v.* Frith, 1709, 1750
— *v.* South Eastern Railway Co., 704
Franks *v.* Cooper, 889, 890
Fraser, in the goods of, 110, 192, 301, 384
— *v.* Byng, 1158
— *v.* Palmer, 1761
— *v.* Pigott, 955
— *v.* Swansea Canal Co., 761
— *v.* Thompson, 665
Frayne *v.* Taylor, 1645
Freake *v.* Cranefeldt, 1843, 1923, 1929
Freakley *v.* Fox, 1179
Fream *v.* Dowling, 1583
Frederick *v.* Hall, 96
— *v.* Hook, 427
Freeman *v.* Fairlie, 1147, 1884, 1885, 1887, 1890, 1891
— *v.* Freeman, 139, 142
— *v.* Lomas, 1174
— *v.* Parsley, 974
— *v.* Simpson, 1288
Freemantle *v.* Taylor, 941
Freer, *Re*, 590, 1188
Freke *v.* Lord Carbery, 1388
— *v.* Thomas, 422
Freme *v.* Clement, 1319
French *v.* Chichester, 1575
— *v.* French, 478, 947
Frere *v.* Peacocke, 30, 312
Frewen *v.* Frewen, 582
— *v.* Relfe, 1339
Friswell *v.* Moore, 460
Frith, In the goods of, 83
— *v.* Cameron, 1825
Frogley *v.* Phillips, 964
Frost *v.* Frost, 1909
— *v.* Ward, 1909
Frowd *v.* Baker, 1908
Fruen *v.* Porter, 1634, 1833
Fruer *v.* Bouquet, 1346
Fry, In the goods of, 190
— *v.* Fry, 1701, 1704, 1724, 1725
— *v.* Tapson, 1722
Fryer, *Re*, 1891
— *v.* Gildridge, 1178, 1181
— *v.* Morland, 1447, 1448, 1458
— *v.* Morris, 1030, 1185
— *v.* Ranken, 1052
Fulleck *v.* Allinson, 25
Fuller, *Re*, 1831
— *v.* Green, 1948
— *v.* Hooper, 6
— *v.* Redman, 1700
Fulton *v.* Andrew, 99, 100, 288, 289, 294, 316
Fulwood's case, 597, 733
Further *v.* Further, 1849
Futter *v.* Jackson, 1885

Fyson *v.* Chambers, 221, 556, 573
— *v.* Westrope, 283
Fytche *v.* Fytche, 1309, 1311

G.

GABB *v.* Prendergast, 956
Gadd, *Re*, 1899
Gaitskell's Trusts, *Re* 1084
Gale *v.* Bennett, 952
— *v.* Gale, 1193
— *v.* Luttrell, 842, 845, 1846, 1903
Galland *v.* Leonard, 1126
Gallant *v.* Bouteflower, 1778, 1784
Galliers *v.* Moss, 1056, 1057
Gallini *v.* Noble, 1052, 1067
Gallivan *v.* Evans, 431, 432, 1751
Gally, In the goods of, 309
Galton *v.* Hancock, 1561, 1562, 1563
Gamboa's Trusts, *Re*, 969
Gann *v.* Gregory, 112, 273, 484
Gardener *v.* Fenner, 1669
Gardiner's Estate, *Re*, 944
Gardiner, In the goods of, 387, 418
— *Re*, 1809
— *v.* Courthope, 132
— *v.* Fell, 1307, 1524
— *v.* Parker, 682, 687
— *v.* Slater, 1109
Gardner, In the goods of, 319
— *v.* Baillie, 1677
— *v.* Barker, 1155
— *v.* Gardner, 661
— *v.* Garrett, 1911
— *v.* Hatton, 1030, 1185
— *v.* James, 942
— *v.* London, Chatham and Dover Railway, 911
Garforth *v.* Bradley, 738, 751, 753
Garland, *Ex parte*, 559, 1519, 1682, 1688, 1816, 1900
— *v.* Beverley, 1011
— *v.* Littlewood, 1771
Garner *v.* Holmes, 1196
— *v.* Moore, 1724
— *v.* Garner, 1011
Garnett, *Re*, 1658
Garrard *v.* Garrard, 232, 399
Garratt *v.* Niblock, 960
Garrett *v.* Lister, 1233, 1234, 1795
— *v.* Noble, 1690
Garrick *v.* Lord Camden, 983, 984
Garter *v.* Dee, 506, 1837
Garth *v.* Baldwyn, 599, 968
— *v.* Meyrick, 1012, 1156
Garthshore *v.* Chalie, 1087, 1240, 1361, 1362, 1363
Garvey *v.* Hibbert, 1017
Gascoyne *v* Chandler, 236, 278
Gaskell *v.* Gaskell, 1480
Gaskell *v.* Harman, 1090
— *v.* Holmes, 1085, 1331
— *v.* Marshall, 562
Gaskill *v.* Hough, 1582
Gaunt *v.* Taylor, 851, 1802, 1936
Gausden, In the goods of, 69
Gawler *v.* Standerwick, 474, 475, 1119, 1254, 1256
Gaynon *v.* Wood, 1163
Gaynor, In the goods of, 409
Gayre *v.* Gayre, 1034
Gaze *v.* Gaze, 72, 77
Geale, In the goods of, 13
Geary *v.* Beaumont, 1898
Geaves *v.* Price, 138, 140
Gedge *v.* Traill, 1917, 1918
Gee *v.* Mahood, 1212
Gellard's Trusts, *Re*, 1806
Genery *v.* Fitzgerald, 1119, 1267
Gent, In the goods of, 454
Gentile, In the goods of, 1388
Gentry, In the goods of, 130
George III., In the goods of, 11, 12
George, *Re*, 1267, 1269, 1292
— *v.* Milbanke, 1550, 1552
Georges *v.* Georges, 261
Gervis *v.* Gervis, 1564, 1589
— *v.* Hallewell, 490
Ghost *v.* Waller, 1720
Gibbins *v.* Eyden, 1565, 1571, 1588
— *v.* Taylor, 1725
Gibblett *v.* Read, 1520
Gibbon *v.* Gibbon, 1064
Gibbons *v.* Dawley, 1877
— *v.* Gibbons, 942
Gibbs *v.* Rumsey, 923
— *v.* Tait, 972, 978, 1330
Giblett *v.* Hobson, 913
Gibson, *Re*, 1081, 1083, 1339
Gibson *v.* Bott, 1242, 1243, 1246, 1248, 1287
— *v.* Fisher, 1385, 1386
— *v.* Hale, 978, 1325
— *v.* Lord Montford, 164
— *v.* Scudamore, 588
— *v.* Seagrim, 1585
Giddings *v.* Giddings, 1518
Gilbert *v.* Boorman, 944
— *v.* Platt, 1787
— *v.* Wetherell, 1375
Gilbertson *v.* Gilbertson, 1581
Gilchrist, *Ex parte*, 1551
Giles, *Re*, 1821, 1905
— *v.* Dyson, 1698, 1768, 1857
— *v.* Giles, 1015, 1077
— *v.* Melsom, 1019
— *v.* Warren, 118
Gill, In the goods of, 87, 88, 234, 350, 355, 400, 401, 414
— *v.* Att.-Gen., 1728

Gill *v.* Barratt, 987
— *v.* Shelley, 954, 956
Gillam *v.* Taylor, 918
Gillaume *v.* Adderley, 1026, 1028
Gillespie *v.* Alexander, 1158, 1208, 1209, 1313, 1314, 1315
Gillett *v.* Gane, 1011
Gilliat *v.* Gilliat, 331, 1055
Gillies *v.* Smither, 1851, 1857
Gilley *v.* Burley, 1248
Gilman *v.* Daunt, 944
Gilmore *v.* Severn, 942
Gimblett *v.* Purton, 944
Gingell *v.* Horne, 471
Giraud *v.* Hanbury, 1345
Gittings *v.* M'Dermott, 933, 936, 967, 969, 971, 1076
Gittins *v.* Steele, 1315, 1582, 1588
Gladding *v.* Yapp, 1345, 1349
Gladdon *v.* Stoneman, 188
Gladstone, *Re*, 1904
— *v.* Tempest, 141
Glaholm *v.* Rowntree, 1523
Glaister *v.* Hewer, 669
Glanvill *v.* Glanvill, 1122, 1294
Glanville *v.* Glanville, 1018
Glass *v.* Oxenham, 1912
Gleadow *v.* Atkin, 827, 1708
— *v.* Leetham, 1508
Glen *v.* Webster, 1952
Glendening *v.* Glendening, 1054
Glengall, Lord, *v.* Barnard, 1169
Gloucestershire Banking Co. *v.* Edwards, 1608
Glover, In the goods of, 66
— *v.* Barlow, 1825
Glover *v.* Hartcup, 1166, 1168
Glynn *v.* Oglander, 97
— *v.* Thorpe, 865
Goate *v.* Fryer, 883, 1911
Godard *v.* Gray, 1392
Goddard *v.* Cressonier, 365
— *v.* Goddard. 354
— *v.* Ingram, 1839
— *v.* Norton, 278
— *v.* Smith, 278
Godfrey, In the goods of, 381
— *v.* Davis, 944, 957
— *v.* Hughes, 1141
Godkin *v.* Murphy, 1327
Godsden *v.* Dotterill, 1509
Godson *v.* Good, 1615
Godwin *v.* Munday 1120
Goffe *v.* Haywood, 1229
Goldicutt *v.* Townshend, 666
Goldie *v.* Greaves, 975
— *v.* Murray, 313
Golding *v.* Vaughan, 1774
Goldney *v.* Crabb, 973
Goldsborough, In the goods of, 377, 462
Goldsmid *v.* Goldsmid, 1146, 1363
Goldsmith *v.* Sidnor, 871, 874
Goldsworthy *v.* Crossley, 51, 328
— *v.* Southcott, 860
Gompertz *v.* Gompertz, 1155
Gooch *v.* Gooch, 942
Goodacre *v.* Smith, 100, 288
Goodall's case, 769
Goodchild *v.* Fenton, 1750
Goodenough, In the goods of, 167
— *v.* Tremamondo, 1039, 1252
Goodfellow *v.* Burchett, 1703
Goodlad *v.* Burnett, 176, 177, 179, 1023, 1067, 1301
Goodman's Trusts, *Re*, 959, 1366, 1388, 1454
Goodman *v.* Edwards, 929
Goodrich *v.* Jones, 431
Goodright *v.* Glazier, 152
— *v.* Harwood, 141
Goodtitle *v.* Meredith, 164
Goodwin's Trusts, *Re*, 954, 957
Goodwin *v.* Finlayson, 1082
— *v.* Lee, 1563
Goodyar, In the goods of, 1047
Gorbell *v.* Davison, 988
Gordon, *Re*, 580
— *v.* Bowden, 1259, 1709
— *v.* Calvert, 1596
— *v.* Duff, 1024
— *v.* Gordon, 928, 958, 959, 1070
— *v.* Hoffman, 1156
— *v.* Reay, 7, 166
— *v.* Trail, 1769
— *v.* Whieldon, 947
Gore *v.* Gibson, 35
— *v.* Knight, 668
Goring *v.* Goring, 1670, 1696
Gornall *v.* Mason, 287
Gorton, *Re*, 1901
— *v.* Dyson, 1830, 1875
— *v* Gregory, 1859
Gosden *v.* Dotterill, 1052
Gosling, In the goods of, 110, 154
— *v.* Gosling, 1255
— *v.* Carter, 575
Goss, *Re*, 1944
Gotch *v.* Foster, 1268
Gott *v.* Nairne, 1255
Gough *v.* Bult, 1154, 1927
— *v.* Findon, 1481
— *v.* Gough, 632
— *v.* Howarde, 1229
Goulburn *v.* Brooks, 1120
Gould *v.* Fleetwood, 1760
— *v.* Kemp, 1339, 1340
— *v.* Lakes, 291, 318
Gout *v.* Zimmerman, 1398
Gouthwaite's case, 1627

Gove *v.* Gawen, 92
Gover *v.* Davis, 1046
Governesses' Benevolent Institution *v.* Rushbridger, 1258
Gowan *v.* Broughton, 1591, 1948
Gower *v.* Gower, 1045
Gowling *v.* Thompson, 1076
Grabowski's Settlement, *Re*, 1250
Gradell *v.* Tysan, 1794
Grafftey *v.* Humpage, 993, 998
Graham, In the goods of, 52, 138, 140
— *v.* Graham, 1163, 1691, 1815
— *v.* Keble, 1738
— *v.* Londonderry, 668, 674, 679, 677, 678, 679, 680, 948
— *v.* Maxwell, 1911
— *v.* Paternoster, 915
Grainger *v.* Slingsby, 1055
Granard *v.* Dunkin, 1799
Grandison *v.* Dover, 492
Grant, In the goods of, 435
— *v.* Dyer, 1144
— *v.* Grant, 429, 668, 670, 963
— *v.* Leslie, 190, 195
— *v.* Lyman, 981, 989
Grantham *v.* Hawley, 629
Granville *v.* Beaufort, 1346
— *v.* M'Neile, 235, 823
Granwell *v.* Silby, 1835
Gratrix *v.* Chambers, 1221
Gratwick's Trusts, *Re*, 1324
Grave *v.* Salisbury, 1194, 1200
Gravener *v.* Parker, 597
Graves *v.* Boyle, 944
— *v.* Griffith, 1931
— *v.* Hicks, 1566
— *v.* Hughes, 1186
— *v.* Weld, 624, 625
Gray, *Re*, 1025, 1187
— *v.* Garman, 1124, 1137
— *v.* Minnethorpe, 934, 1579, 1580
— *v.* Siggers, 1039, 1252, 1719
Grayburn *v.* Clarkson, 1613, 1717
Graydon *v.* Hicks, 1144, 1345
Graysbrook *v.* Fox, 222, 250, 253, 400, 501
Greated *v.* Greated, 986, 1131
Greaves, In the goods of, 87
— *Re*, 1915, 1922, 1930
Green's Estate, *Re*, 1084, 1134
— Settlement, *Re*, 1073
Green, *Ex parte*, 1264, 1274
— *Re*, 1205
— *v.* Belcher, 1269
— *v.* Britten, 1039, 1245, 1252
— *v.* Cole, 1605
— *v.* Croft, 1410
— *v.* Dunn, 1319
— *v* Green, 1144
— *v.* Harvey, 1129, 1131
Green *v.* Howard, 980
— *v.* Jackson, 586
— *v.* Lord Listowell, 1636
— *v.* Otte, 1276, 1283
— *v.* Pertwee, 1325
— *v.* Pigot, 1119, 1256, 1257, 1258
— *v.* Salmon, 1681
— *v.* Skipworth, 39
— *v.* Smith, 581, 1644
— *v.* Symonds, 1034, 1041, 1190
— *v.* Tribe, 7, 166, 171
Greene *v.* Greene, 1581, 1582
Greenhalgh *v.* Bates, 937, 1122
Greening *v.* Barker, 1288
Greenough *v.* Martin, 145, 166, 171, 291
Greenway *v.* Greenway, 936, 978
Greenwell *v.* Greenwell, 1278
Greenwood's Trusts, *Re* 1327
— Will, *Re*, 984, 988
— Case, 24
Greenwood, In the goods of, 71, 125
— *Re*, 1218, 1219
— *v.* Greenwood, 1156
— *v.* Penny, 1311
— *v.* Taylor, 1587
Greer *v.* Pertwee, 1325
Greet *v.* Greet, 1104, 1255
Gregory *v.* Harman, 1829
— *v.* Lockyer, 1655
— *v.* The Queen's Proctor, 73, 85, 90
— *v.* Smith, 989
— *v.* Williams, 1668
Gregson, *Re*, 1781, 1846
Gregson's Estate, *Re*, 1331
Greig, In the goods of, 131, 132
— *v.* Somerville, 1210
Greisley *v.* Lord Chesterfield, 1247
Gretton *v.* Haward, 1311
Greville *v.* Tylee, 113
Grey's Trusts, *Re*, 1388
Grey *v.* Pearson, 937
Grice *v.* Shaw, 603
Grieve *v.* Grieve, 946
Grieves *v.* Case, 915, 918
— *v.* Rawley, 963
Griffin *v.* Ashley, 1841
— *v.* Ferrard, 96
Griffith, In the goods of, 140
— *Re*, 729, 731
— *v.* Hughes, 1740
— *v.* Morrison, 1243
— *v.* Porter, 1725
— *v.* Ricketts, 584
— *v.* Sheffield, 1668
Griffiths, *Re*, 1495, 1940
— *v.* Anthony, 848
— *v.* Bennett, 846
— *v.* Evan, 989
— *v.* Gale, 1086

Griffiths *v.* Griffiths, 84, 93
— *v.* Hamilton, 464, 1340, 1345, 1346, 1347
— *v.* Porter, 1739
— *v.* Pruen, 1147
— *v.* Rogers, 1347
— *v.* Smith, 1241
Grimmett *v.* Grimmett, 915
Grimshaw's Trusts, *Re*, 1101, 1102
Grimstead *v.* Shirley, 760
Grimwood *v.* Cozens, 131
Grindall *v.* Grindall, 294
Grissell *v.* Swinhoe, 1310
Groom *v.* Thomas, 15, 25
Grove, *Re*, 959
Grove's Trusts, *Re*, 1099, 1100
Groves, *Re*, 1278
— *v.* Clarke, 1281
— *v.* Levi, 1879
— *v.* Perkins, 1281
— *v.* Wright, 1253
Groves's Trust, *Re*, 1059
Grundy, In the goods of, 353, 385
Gryll's Trusts, *Re*, 984, 995, 1002.
Grymes *v.* Boweren, 654, 657, 659
Guardhouse *v.* Blackburne, 293, 316
Gude *v.* Mumford, 1507, 1509
Guest *v.* Willasey, 164
Gullan, In the goods of, 118
Gundry *v.* Pinniger, 986, 987
Gulliver *v.* Wickett, 1134
Gummoe *v.* Howes, 932
Gunn, In the goods of, 188, 271, 327, 331, 550, 580
Gunter *v.* Gunter, 1544
Gurly *v.* Gurly, 1361
Gurney *v.* Gurney, 899
Guthrie *v.* Walrond, 1041, 1310
Gutteridge *v.* Stilwell, 351, 755
Guy *v.* Sharp, 1156, 1159, 1161
Gwillim *v.* Gwillim, 75, 77, 91
— *v.* Holland, 604
Gwyer *v.* Peterson, 1908, 1909
Gywnne *v.* Edwards, 1586
Gywnne *v.* Muddock, 970
Gyett *v.* Williams, 1222
Gyhon, *Re*, 1812
Gyles *v.* Dyson, 1854
— *v.* Gyles, 1928

H.

HABERGHAM *v.* Ridehalgh, 1077, 1339
— *v.* Vincent, 86, 326
Hacker *v.* Newborn, 39
Hackman *v.* Black, 842
Haddelsey *v.* Adams, 1328, 1329
Haddon *v.* Fladgate, 54, 666
Haden *v.* Parsons, 1740
Hagger, In the goods of, 385
— *v.* Payne, 944
Haig *v.* Swiney, 1058
Haines *v.* Welch, 629
Hakewell, In the goods of, 88
Haldane *v.* Eckford, 1394, 1395
Haldenby *v.* Spofforth, 1940
Hale, In the goods of, 386
— *v.* Hale, 1116
— *v.* Tokelove, 168, 170, 181, 295
Hales *v.* Cox, 870, 1586
— *v.* Darell, 1163, 1166
— *v.* Freeman, 1441, 1506, 1507
Haley *v.* Bannister, 1162, 1270
Hall, In the goods of, 99
— *Re*, 953, 954, 957, 1899
— *v.* Andrews, 806
— *v.* Austin, 1913
— *v.* Brooker, 1580
— *v.* Elliott, 212, 215
— *v.* Fisher, 929
— *v.* Hall, 40, 1041
— *v.* Hallett, 807, 1702, 1748, 1750
— *v.* Hewer, 947, 951
— *v.* Hill, 1070, 1161, 1169, 1198, 1349
— *v.* Huffam, 1618, 1774, 1833
— *v.* Hugonin, 744
— *v.* Luckup, 950
— *v.* May, 830
— *v.* McDonald, 887
— *v.* Robertson, 1142
— *v.* Severn, 6
— *v.* Tapper, 881
— *v.* Warren, 16, 17, 18, 922, 930, 934, 1134
— *v.* Wyborn, 1842
Hallett, *Re*, 567, 1896
— *v.* Hallett, 1781
Hallifax *v.* Wilson, 1105, 1108, 1138
Halliwell, In the goods of, 132, 455
— *v.* Tanner, 1564
Hallyburton, In the goods of, 308
Halton *v.* Foster, 984
Ham's Trust, 980, 1081
Hambrooke *v.* Simmons, 685
Hambly *v.* Trott, 1595, 1601, 1602, 1603, 1606
Hamer's Devisees' Case, 1560, 1596, 1626
Hames *v.* Hames, 1005
Hamilton, *Re*, 1271
— *v.* Aston, 1792
— *v.* Dallas, 1398
— *v.* Incledon, 1672
— *v.* Lloyd, 1064
— *v.* Mills, 746
— *v.* Worley, 1564, 1568
Hammersley *v.* De Biel, 109
Hammond, In the goods of, 70, 78, 435
— *v.* Douglas, 1521
— *v.* Gatliffe, 1601

Hammond *v.* Maule, 1099, 1106
— *v.* Smith, 1168
Hamond *v.* Jethro, 571, 1615
Hampson, In the goods of, 437
— *v.* Brandwood, 975
Hanbury *v.* Hanbury, 1168
— *v.* Kirkland, 1732, 1735
— *v.* Spooner, 1147
Hanby *v.* Fisher, 1588
— *v.* Roberts, 1587
Hance *v.* Truwhitt, 1308
Hancock *v.* Hancock, 663
— *v.* Podmore, 837, 838, 1679, 1860
— *v.* Prowd, 217, 885, 1702, 1859
Hancom *v.* Allen, 1709, 1724
Hancox *v* Abbey, 1579, 1582, 1583
Hand, In the goods of, 1053, 1054
Handley *v.* Stacy, 35
Hands *v.* Hands, 1930, 1933
Hannam *v.* Mockett, 619
— *v.* Sims, 1084
Hannay *v.* Taynton, 437
Hansen *v.* Miller, 748, 993
Hanson *v.* Graham, 1088, 1095, 1098, 1101
Harbert, Sir William's Case, 1617
Harbin *v.* Darby, 1761, 1769, 1815, 1942
Harcourt *v.* Morgan, 1064, 1300
— *v.* White, 1928
Hardcastle *v.* Hardcastle, 1099, 1111
Harden *v.* Forsyth, 1873
— *v.* Parsons, 1708
Harding, In the goods of, 351, 755
— *v.* Edge, 864
— *v.* Glyn, 981
— *v.* Harding, 1451, 1488
— *v.* Salkill, 1835
Hardinge, In the goods of, 387
Hardstone, In the goods of, 443, 461
Hardwick *v.* Hardwick, 1070
— *v.* Thurston, 1083
Hardy, In the goods of, 295
— *Re*, 1220, 1221, 1222, 1223
Hare, *Re*, 782
— In the goods of, 92, 272
Harecourt *v.* Wrenham, 1523
Harewood *v.* Child, 1579
Harford *v.* Browning, 1152
Hargrave's case, 1634
Hargreaves, *Re*, 1904
— *v.* Michell, 1922, 1923
Hargthorpe *v.* Millforth, 1726
Harland *v.* Trigg, 991
Harley *v.* Bagshaw, 138
— *v.* Moon, 1212, 1214, 1217
Harloe *v.* Harloe, 518
Harman *v.* Harman, 879
Harmony (The), case of, 1392
Harmood *v.* Oglander, 1591, 1592
Harrald, *Re*, 1903
Harries' Trust, *Re*, 1320, 1322
Harrington, *Re*, 1276
— *v.* Bowyer, 282
— *v.* Harrington, 638
Harris, In the goods of, 97, 117, 125, 138, 140, 201, 300
— *Re*, 909, 910, 1409
— *v.* Berrall, 16, 36, 125
— *v.* Davis, 967, 1080, 1084, 1324
— *v.* Farwell, 1623
— *v.* Fergusson, 570
— *v.* Finch, 1294
— *v.* Gandy, 1908, 1909
— *v.* Goodwyn, 1613, 1862
— *v.* Earl Howe, 1495
— *v.* Knight, 93, 135, 318
— *v.* Lloyd, 945, 957
— *v.* Milburn, 449, 450
— *v.* Poyner, 1039, 1252
— *v.* Saunders, 860
— *v.* Watkins, 579
Harrison's case, 868, 872
Harrison, In the goods of, 435
— *Re*, 484, 486, 887, 894, 929, 1013, 1645, 1831
— *v.* All persons in general, 379
— *v.* Andrews, 745
— *v.* Barton, 572
— *v.* Beccles, 1860
— *v.* Elvin, 83
— *v.* Foreman, 1137
— *v.* Graham, 230, 1737
— *v.* Grimwood, 1099, 1102, 1109
— *v.* Harrison, 82, 909, 1017, 1344
— *v.* Jackson, 1186, 1187
— *v.* Naylor, 1119
— *v.* Rowley, 212, 1147, 1151
— *v.* Stone, 292
Harriss *v.* Fawcett, 1660
Harrod *v.* Harrod, 13, 35
Harrop's Estate, *Re*, 591
Hart *v.* Middlehurst, 1552
— *v.* Minors, 1829
— *v.* Stephens, 739, 749
— *v.* Tribe, 990
Harter *v.* Harter, 293, 294, 316
Hart's Trusts, *Re*, 1099, 1101, 1119
Hartland *v.* Murrell, 578
Hartley, *Re*, 1133, 1930
— *v.* Hurle, 1579
— *v.* Tribber, 932, 956, 957
Hartop *v.* Whitmore, 1194
Hartopp *v.* Hartopp, 1195
Hartshorne *v.* Nicholson, 915
Hartwell *v.* Chitters, 1548
— *v.* Colman, 1208
— *v.* Colvin, 1922
Harvey's Estate, *Re*, 1550
Harvey *v.* Aston, 1123, 1128, 1129, 1142

Harvey *v.* Cooke, 1064
— *v.* Harvey, 648, 982, 1039, 1051, 1252, 1264, 1274, 1291, 1946
— *v.* Olliver, 1941
— *v.* Palmer, 1171, 1175
Harwood *v.* Baker, 34, 290
— *v.* Fisher, 744
— *v.* Goodright, 4, 152
— *v.* Hilliard, 1595
— *v.* Wrayman, 1522
Haseldine, *Re*, 957
Haselinton *v.* Gill, 661
Haslewood *v.* Green, 970, 1224
— *v.* Pope, 1579
Hasluck *v.* Lehman, 1934
— *v.* Pedley, 729, 731
Hassall *v.* Smithers, 1544
Hassell *v.* Dawkins, 1168
Hastelow *v.* Stobie, 289
Hastie's Trusts, *Re*, 953, 958
Hastings, In the goods of, 382
— *Re*, 869
— Lord, *v.* Sir Archibald Douglas, 635, 674, 677
— *v.* Hane, 1053, 1318
Hatch *v.* Searles, 1946
— *v.* Skelton, 1563
Hatchard *v.* Mege, 699, 700, 1799
Hatfield *v.* Minet, 1374
— *v.* Pryme, 587
Hatherton, Lord, *v.* Bradburne, 725
Hathornthwaite *v.* Russell, 187, 188, 1881
Hatton, In the goods of, 85, 86, 1284
Hauchet's case, 613
Haughton *v.* Harrison, 944, 1292
Havergal *v.* Harrison, 482, 1081
Havers *v.* Havers, 419, 1881
Hawarden *v.* Dunlop, 299
Hawes *v.* Leader, 211
— *v.* Smith, 1669
Hawke *v.* Wedderburne, 386
Hawkes *v.* Baldwin, 1133
— *v.* Barrett, 1908
— *v.* Hawkes, 99
— *v.* Saunders, 1228, 1661, 1667, 1673
Hawkins' Trusts, *Re*, 913, 1147
Hawkins *v.* Allen, 912, 913
— *v.* Blewitt, 684
— *v.* Combe, 1293
— *v.* Day, 1203, 1205, 1727
— *v.* Hawkins, 950, 1058, 1648
— *v.* Lawse, 1522
— *v.* Watts, 1272
Hawksworth *v.* Hacksworth, 937
Haworth, *Re*, 1887
Hay, In the goods of, 349
— *v.* Coventry, 929
— *v.* Fairlie, 1497
Haydon *v.* Rose, 937, 1138
— *v.* Wood, 576
Hayes, In the goods of, 106
— *v.* Hayes, 1026
Haygarth's Trusts, *Re*, 1453
Hayle *v.* Hasted, 280
Hayler *v.* Tucker, 720
Hayling *v.* Okey, 632
Haynes, In the goods of, 184
— *v.* Forshaw, 801, 806, 1585, 1664
— *v.* Haynes, 1212, 1222, 1224, 1510
— *v.* Hill, 88
— *v.* Matthews, 361, 386
— *v.* Mico, 1164
Hayslep *v.* Gymer, 691
Hayter *v.* Joinville, 991
— *v.* Moat, 1681
— *v.* Trego, 924
— *v.* Tucker, 910
Hayton *v.* Wolfe, 205
Hayward, *Re*, 1125
— *v.* Constable, 1911
— *v.* James, 1138
— *v.* Kinsey, 849, 1702
Head *v.* Randall, 933, 974, 1386
Headington *v.* Holloway, 313
Heal *v.* Knight, 1489
Heard *v.* Stanford, 1652
Hearle *v.* Greenbank, 1269, 1292, 1308
Hearn *v.* Baker, 1330
— *v.* Wells, 567, 1943
Hearne *v.* Wiggington, 1040, 1317, 1319
Heasman *v.* Pearse, 975, 1328, 1331
Heath's Settlement, *Re*, 975
Heath *v.* Atworth, 488
— *v.* Brindley, 1873
— *v.* Chapman, 901, 902, 904, 919
— *v.* Chilton, 765, 786, 1777
— *v.* Dendy, 1217, 1218
— *v.* Lewis, 1141
— *v.* Nugent, 1221, 1507
— *v.* Percival, 1878
— *v.* Perry, 1269, 1290, 1293, 1294
— *v.* Samson, 1392
— *v.* Weston, 1062
Heathcote, In the goods of, 87, 89
Heathcote's Trusts, *Re*, 1126
Heathcote *v.* Hulme, 1295, 1752, 1753
Heathe *v.* Heathe, 1327, 1328
Heaton, *v.* Hassell, 753
Hebblethwaite *v.* Peever, 1924
Hedgeley, *Re*, 1557, 1652, 1654
Hedges *v.* Harpur, 972, 1059
— *v.* Hedges, 681, 1568
Hedges' Trust, *Re*, 1212
Hedgman, *Re*, 912, 915
Heighington *v.* Grant, 1758, 1759, 1764, 1936

Hele *v.* Stowell, 506
Helier *v.* Casbert, 1636, 1640
Hellawell *v.* Eastwood, 642
Hellier, *Ex parte*, 489
— *v.* Casbard, 1631
— *v.* Hellier, 138, 430
Helyar *v.* Helyar, 137
Heming *v.* Clutterbuck, 1157
Hemingway, *Re*, 937
Hemming *v.* Gurrey, 1153
Hemmings *v.* Munckley, 1140
Henchman *v.* Att.-Gen., 580, 923
Hender *v.* Rose, 1374
Henderson, In the goods of, 366
— *Re*, 992, 1003, 1880
— *v.* Cross, 1131
— *v.* Dodds, 1940, 1945
— *v.* French, 848
— *v.* Henderson, 1782
— *v.* M'Iver, 1768
Henfrey *v.* Henfrey, 140, 153, 162, 189
Henley *v.* Philipps, 48
Henningham's case, 1594
Henshall *v.* Matthew, 781
Henshaw *v.* Atkinson, 914
Hensler, *Re*, 1086
Hensloe's case, 339, 340, 355
Hensman *v.* Fryer, 1564, 1565, 1571, 1588, 1589, 1592
Henvell *v.* Whitaker, 578, 1153
Hepburn *v.* Skirving, 1302
Hepworth *v.* Heslop, 882
— *v.* Hill, 1567, 1572
Herbert's Trusts, *Re*, 954, 956
Herbert *v.* Herbert, 54, 105
— *v.* Lowns, 34
— *v.* Pigott, 816
— *v.* Powis, 1667
— *v.* Reid, 1009
— *v.* Sheill, 459
Hereford *v.* Ravenhill, 585
Herefordshire Bank, *Re*, 1628
Herlakenden's case, 621, 622, 644, 647
Heron *v.* Poole, 1576
— *v.* Stokes, 1124, 1385
Herons (Minors), *Re*, 1272
Herns *v.* Drake, 723
Herrenden *v.* Palmer, 1833
Herrick *v.* Franklin, 967, 978
Hertford *v.* Lowther, 1041, 1043, 1157, 1288
— (Lord), *v.* Zichi, 1916
Hervey, *Re*, 1945
— *v.* Fitzpatrick, 369, 1526
— *v.* McLaughlin, 1126, 1137
Heseltine *v.* Heseltine, 1190
Heslop, In the goods of, 497
Hesse, Elector of, In the goods of, 366, 376
Hetherington *v.* North Eastern Railway Company, 704
— *v.* Oakman, 936
Heward *v.* Wheatley, 1627
Hewes *v.* Hewes, 1893
Hewett *v.* Foster, 1728, 1729, 1730, 1936
Hewit *v.* Wright, 587
Hewitt *v.* Jardine, 1370
— *v.* Kaye, 689
— *v.* Morris, 1243, 1246
Hewlins *v.* Shippam, 633
Hewson *v.* Reid, 1069
Hewston *v.* Phillips, 1830
Heygate *v.* Annesley, 751
Heylin *v.* Heylin, 165
Heyward's case, 1742
Heywood *v.* Heywood, 953
Hibben *v.* Calemberg, 499
Hibbert *v.* Hibbert, 980
Hickey *v.* Hayter, 1857, 1869
Hickman *v.* Black, 418
Hickling *v.* Boyer, 1204, 1205, 1563, 1647
Hickman *v.* Upsall, 264, 1212, 1260
— *v.* Walker, 1785, 1786
Hicks, In the goods of, 111
Keat, 1427
— *v.* Ross, 1059, 1062
Hide *v.* Haywood, 1936
Higgins's Trusts, *Re*, 1847
Higgins, *Re*, 1412, 1446, 1470, 1472, 1505
— *v.* Higgins, 845
Higgon *v.* Mortimer, 643
Higham *v.* Higham, 1944
Hilbert *v.* Lewis, 1831
Hill, In the goods of, 105, 301, 306, 366
Hill's Trusts, *Re*, 907, 1126
— case, 1627
Hill *v.* Atkinson, 1410, 1478
— *v.* Bird, 496, 497
— *v.* Crook, 953, 954, 956, 957
— *v.* Curtis, 214, 215, 216, 218, 219, 220, 344, 345
— *v.* Gomme, 1206
— *v.* Hill, 1026, 1037, 1291
— *v.* Rattey, 1059
— *v.* Simpson, 806
— *v.* Walker, 895, 1699, 1800
— *v.* Wilson, 1658, 1902
Hillam *v.* Walker, 311
Hilliard, *Re*, 1753
— *v.* Eiffe, 482
— *v.* Fulford, 1947
Hills *v.* Hills, 684
— *v.* M'Rae, 1618
— *v.* Mills, 187, 188, 337, 441
Hilton *v.* Giraud, 910
Hinchcliffe *v.* Hinchcliffe, 1163
Hinchcliffe *v.* Westwood, 992

Hinckley, *Re*, 404
— *v.* Maclarens, 984
— *v.* Simmons, 160, 1125
Hind *v.* Selby, 1039, 1252, 1330
Hinde *v.* Blake, 1884, 1885
— *v.* Skelton, 1836
Hindle *v.* Taylor, 1212
Hindmarch, In the goods of, 113
Hindmarsh *v.* Charlton, 79, 82, 83
Hindsley *v.* Russell, 1856, 1862
Hindson *v.* Wetherill, 100, 468
Hingeston *v.* Tucker, 279
Hinings *v.* Hinings, 1285
Hinson *v.* Button, 1284
Hinton *v.* Parker, 848
— *v.* Pinke, 1022
— *v.* Toye, 1550
Hinves *v.* Hinves, 1038, 1039, 1252
Hirst *v.* Smith, 789, 790
— *v.* Tolson, 1650
Hitchcock *v.* Beardsley, 742, 1073
Hitchen *v.* Birks, 433
Hitchens *v.* Hitchens, 604
Hitchings *v.* Wood, 101, 136
Hitchins *v.* Bassett, 141
Hoare, In the goods of, 495
— *v.* Contencin, 1621
— *v.* Osborne, 918, 921, 1083
Hoath *v.* Hoath, 1098
Hobbs *v.* Knight, 112, 115, 117, 154, 170
— *v.* Parsons, 1099
Hobgen *v.* Neale, 973, 1078
Hobson, *Re*, 1251
— *v.* Blackburn, 8, 109, 929
— *v.* Neale, 1488
Hoby *v.* Hoby, 15
Hockley *v.* Bantock, 1717
— *v.* Wyatt, 281
Hodge *v.* Foot, 1333
Hodges' Legacy, 1133
Hodges, *Re*, 1272
Hodges *v.* Grant, 1022, 1428
— *v.* Hodges, 1550
— *v.* Peacock, 1156, 1159
— *v.* Waddington, 1313, 1314
Hodgson, *Re*, 1173, 1174, 1619, 1658, 1903
Hodgson's Trusts, *Re*, 1328
Hodgson *v.* Ambrose, 930
— *v.* Bective, 1267
— *v.* Bibby, 1927
— *v.* Clarke, 1011
— *v.* De Beauchesne, 1395, 1397
— *v.* Halford, 1139, 1140
— *v.* Jex, 1040, 1048
— *v.* Rawson, 1120
— *v.* Smithson, 1078
Hodkinson *v.* Quinn, 576, 577
Hodsden *v.* Harridge, 1785, 1789
Hodsden *v.* Lloyd, 47
Hodson *v.* Lloyd,
Hoe *v.* Nelthorpe, 1793
Hoffman *v.* Norris, 275, 277
Hogg *v.* Cook, 964
— *v.* Jones, 1139
Holden *v.* Kynaston, 1916
— *v.* Ramsbottom, 1065
Holderness *v.* Reyner, 1337, 1338
Holdernesse (Lady) *v.* Lord Carmarthen, 719
Holdsworth *v.* Davenport, 910, 912
Hole *v.* King, 761
Holford *v.* Wood, 1156
Holgate *v.* Jennings, 987, 1039, 1079, 1245, 1252
Holl *v.* Bradford, 700, 1607
Holland *v.* Clark, 1828, 1895, 1924
— *v.* Hughes, 1248, 1709
Holland *v.* King, 344
— *v.* Prior, 845, 1913
— *v.* Wood, 936, 952
Holliday *v.* Atkinson, 688
— *v.* Boas, 1177
— *v.* Bowman, 1582
— *v.* Fletcher, 1833
Hollingshead, *Re*, 1839, 1841
Hollingshead's case, 1801
Hollingsworth *v.* Grasett, 1152
Hollingworth *v.* Ascue, 868
Hollis's case, 1922
Hollis *v.* Smith, 760, 761
Holloway *v.* Clarkson, 994
— *v.* Collins, 1261
— *v.* Holloway, 969, 988, 1000, 1003
— *v.* Radcliffe, 987
— *v.* Webber, 638, 1255
Holme *v.* Hammond, 1618
Holmes *v.* Coghill, 1552, 1592
— *v.* Dring, 1707
— *v.* Godson, 1131
— *v.* Holmes, 1197, 1297
— *v.* Tutton, 1797
Holmesdale *v.* West, 638
Holt, In the goods of, 139, 152
— *v.* Frederick, 1370
— *v.* Sindrey, 954, 957, 958
— *v.* Winchester, Bishop of, 594
Holyland, *Ex parte*, 17
— *v.* Lewin, 1086
Homan, In the goods of, 400
Home *v.* Pillans, 1126, 1331
— *v.* Pringle, 1728
Homfray, In the goods of, 323
Hone's Trusts, *Re*, 1086
Hone *v.* Medcraft, 1032, 1192
Honer *v.* Morton, 744
Honywood, In the goods of, 317
— *v.* Foster, 1305

Hood *v.* Barrington, 299
— *v.* Clapham, 1040, 1252
— *v.* Oglander, 1130
— *v.* Pimm, 1804
Hooley *v.* Hatton, 1156–1159
Hooper's Will, *Re*, 1824
Hooper *v.* Goodwin, 1658
— *v.* Summersett, 210, 217, 218, 1860
Hope *v.* Bague, 1634, 1869
— *v.* Potter, 935
Hopgood *v.* Parkin, 1701
Hopkins, In the goods of, 385
Hopkins' Trusts, *Re*, 952, 975, 1332
Hopkins *v.* Abbott, 1056
Hopkinson *v.* Ellis, 585
— *v.* Forster, 690
— *v.* Leach, 894
— *v.* Roe, 1768
Hopton *v.* Dryden, 888, 891
Hopwood *v.* Hopwood, 165, 1194, 1195, 1197
— *v.* Whaley, 1688
Horde *v.* Lord Suffolk, 923
Hore *v.* Becher, 747
— *v.* Woulfe, 751, 758
Horne *v.* Coleman, 1327
Hornbuckle, In the goods of, 50, 58, 182, 327, 328
Horne *v.* Shepherd, 1940
Horner, *Re*, 582, 937, 953, 957, 993
Horner's Estate, *Re*, 1333, 1334
Horner *v.* Horner, 342
Hornidge *v.* Wilson, 1641
Horrell *v.* Witts, 430
Horridge *v.* Ferguson, 978
Horseman *v.* Abbey, 994
Horsepool *v.* Watson, 975, 1000
Horsford, In the goods of, 123, 125
Horsley *v.* Chaloner, 1893, 1896
Horton *v.* Brochlânurst, 1734, 1736
Horwood *v.* Griffith, 1029, 1070
Hosier *v.* Arundell, 765, 1537
Hosking *v.* Nicholls, 1024, 1027, 1028, 1751
Hoskins *v.* Campbell, 1908
— *v.* Matthews, 1395
Hoste *v.* Pratt, 942, 944, 1272
Hotchkin *v.* Humfrey, 1115
Hotchkiss's Trusts, *Re*, 1076
Hotchkys, *Re*, 1310
Hotham *v.* Sutton, 1025, 1042, 1046
Houblon, In the goods of, 167
Houel *v.* Barnes, 825
Houghton *v.* Franklin, 1242
Household, *Re*, 1807, 1825
Houston, In the goods of, 459
Hovenden *v.* Annesley, 1923
Hovey *v.* Blakeman, 1732, 1765
Howard, In the goods of, 7, 141
Howard *v.* Baillie, 1677
— *v.* Bank of England, 660, 663
— *v.* Conway, 1067
— *v.* Digby, 671, 673
— *v.* Howard, 1330, 1876
— *v.* Jemmet, 559
— *v.* Oakes, 740
— *v.* Papera, 188, 1881
— *v.* Wilson, 1008
Howarth, *Re*, 1275
— *v.* Rothwell, 1212
Howden, In the goods of, 87, 300
Howe *v.* Lord Dartmouth, 1028, 1034, 1038, 1039, 1248, 1249, 1251, 1709, 1710, 1717, 1719, 1724
— Earl *v.* Lichfield, Earl of, 1459, 1475
— *v.* Whitebank, 831
Howell *v.* Gayler, 994, 1052
— *v.* Price, 1563
— *v.* Metcalfe, 460, 461
Howells *v.* Jenkins, 1305, 1311
Howes *v.* Herring, 1090
Howgrave *v.* Cartier, 1114, 1115
Howkins *v.* Howkins, 1933
Howley *v.* Knight, 733
Howman *v.* Corie, 749
Howse *v.* Chapman, 720, 918, 923
— *v.* Webster, 1636
Hoyes *v.* Kindersley, 670
Hubback, *Re*, 885, 889, 891
Hubbard, In the goods of, 86, 111
— *v.* Alexander, 1160
— *v.* Young, 1039, 1252
Huble *v.* Clark, 319
Huckvale, In the goods of, 69, 78
Huddlestone, In the goods of, 294, 316
Hudleston *v.* Gouldsbury, 1056
— *v.* Hudleston, 381
Hudson *v.* Bryant, 935
— *v.* Cook, 581, 1573
— *v.* Hudson, 411, 760, 761, 820, 821, 1178
— *v.* Parker, 75, 77
Hudson's Trusts, *Re*, 1121
Huffam *v.* Hubbard, 1330
Huggins *v.* Alexander, 843
Hughes, In the goods of, 68, 817
— *v.* Coles, 1925
— *v.* Cookson, 418
— *v.* Ellis, 1131
— *v.* Empson, 1718
— *v.* Hosking, 165
— *v.* Hughes, 942, 1352
— *v.* Jones, 176
— *v.* Pritchard, 1317
— *v.* Ricards, 419
— *v.* Turner, 150, 151, 165, 447
— *v.* Wells, 1560
— *v.* Williams, 1927

Hughes *v.* Wynne, 1923
Hugo, In the goods of, 158, 159
Huguenin *v.* Basely, 40
Huish, *Re*, 1166
Hulme *v.* Heygate, 164
Hulkes *Re*, 1740, 1751, 1756, 1810
Hull *v.* Hill, 1055
Hull's Estate, *Re*, 1018
Humberston *v.* Humberston, 1149
Humberstone *v.* Chase, 1227
— *v.* Stanton, 1084, 1085
Humble *v.* Bill, 802
— *v.* Langston, 1632
— *v.* Shore, 1324
Hume *v.* Druyff, 1934
— *v.* Lopes, 1710, 1713
— *v.* Rundell, 476
Humfrey *v.* Humfrey, 1079
Humphrey *v.* Bullen, 346, 349, 755, 1358
— *v.* Humphrey, 1058
— *v.* Tayleur, 1080
Humphreys *v.* Howes, 1084
— *v.* Humphreys, 256, 342, 1024, 1215, 1803
— *v.* Ingledon, 249, 256, 343, 1803
— *v.* Moore, 1814
Humphries, *Re*, 953, 955, 956, 957
Humphries *v.* Humphries, 1186
Hunt's Trusts, *Re*, 1322, 1324
Hurst *v.* Berkley, 1337, 1338
Hunt-Foulston *v.* Furber, 1130
Hunt *v.* Hort, 1013, 1066
— *v.* Hunt, 69, 724
— *v.* Scott, 1039, 1252
— *v.* Stevens, 253, 538, 539, 1794
Hunter's Trusts, *Re*, 1098
Hunter, *Ex parte*, 1115, 1127
— *v.* Baxter, 1701
— *v.* Cheshire, 1076
— *v.* Judd, 1090, 1113
— *v.* Nockolds, 1927
— *v.* Rice, 609
Huntex *v.* Young, 1207, 1313, 1314, 1822, 1918
Hunting *v.* Sheldrake, 1556
Huntley *v.* Griffith, 756
— *v.* Russell, 1609
Hurry *v.* Hurry, 1078, 1079
— *v.* Morgan, 937
Hurst *v.* Beach, 1157, 1158, 1159
— *v.* Hurst, 1948
Husband *v.* Pollard, 767
Hussey *v.* Berkeley, 959, 960
Hutcheon *v.* Mannington, 1090, 1091
Hutcheson *v.* Hammond, 1145, 1258, 1709
— *v.* Jones, 944
Hutchins *v.* Foy, 1120
— *v.* Smith, 744
Hutchinson's Trusts, *Re*, 1386
Hutchinson *v.* Barrow, 1302
— *v.* Lambert, 401, 403
— *v.* Savage, 564
— *v.* Sturges, 1781
Hutchinson and Tenant, *Re*, 98, 989, 990
Hutton, In the goods of, 264
— *v.* Rossiter, 1894
Hyam *v.* Helm, 1801
Hyde *v.* Dean of Windsor, 1597, 1630
— *v.* Hyde, 119, 127, 130
— *v.* Haywood, 1759
— *v.* Mason, 127
— *v.* Neate, 1170
— *v.* Skinner, 1595
Hyett *v.* Mekin, 580, 1813
Hynes *v.* Redington, 1709

I.

IBBETSON, In the goods of, 123
— *v.* Ibbetson, 1566
Ibbotson *v.* Elam, 1249
Ickeringill's Estate, *Re*, 1822
Ihler, In the goods of, 355
Ilchester, Lord, *Ex parte*, 127, 130
— *v.* Lord Carnarvon, 1566, 1568
Illidge, *Re*, 888, 889, 890, 893, 1858, 1559
Ilott *v.* Genge, 76, 77, 78
Ince, In the goods of, 167
Inchiquin *v.* French, 329, 1578, 1579
Incledon *v.* Northcote, 678, 1291
Incorporated Church Building Society *v.* Coles, 920
Ingery *v.* Hyde, 1598
Ingle's Trusts, *Re*, 1013
Ingle *v.* Richards, 243, 1179, 1929
— *v.* Partridge, 1705, 1728, 1884
Ingleby *v.* Dobson, 913
Inglesant *v.* Inglesant, 77
Ingoldby *v.* Ingoldby, 88
Ingram *v.* Wyatt, 34, 40, 99, 100
— *v.* Soutten, 1126
— *v.* Strong, 157
Inland Revenue Commissioners *v.* Harrison, 1457, 1468
Innes *v.* Johnson, 1022, 1030
— *v.* Mitchell, 1061, 1220, 1221
— *v.* Sayer, 1029
Ion *v.* Ashton, 908, 1583
Ipswich, Bailiffs of, *v.* Martin, 1634
Irby *v.* Irby, 883, 1947
Iredale *v.* Ford, 363
Iredell *v.* Iredell, 944
Ireland *v.* Bendall, 282
Irons *v.* Smallpiece, 682, 684
Irvin *v.* Ironmonger, 1242
Irvine *v.* Sullivan, 330
Irving, In the goods of, 462
Isaac *v.* Defriez, 918
Isted *v.* Stanley, 205, 257

Ive *v.* King, 1078, 1084, 1328
Ives *v.* Dodgson, 1068
— *v.* Sammes, 1641
Ivison *v.* Gassiot, 1046
Ivory, *Re*, 433, 465, 466
Izod *v.* Izod 979
Izon *v.* Butler, 1073, 1226, 1491

J.

JACK *v.* Featherston, 931
Jackson, *Re*, 1081, 1825
— *v.* Bowley, 1857
— *v.* Calvert, 973
— *v.* Dover, 1114
— *v.* Forbes, 1499
— *v.* Hamilton, 1565
— *v.* Hurlock, 164
— *v.* Jackson, 458, 460, 1088, 1158, 1327
— *v.* Kelly, 1319
— *v.* Lyon, 1860
— *v.* Paulet, 197
— *v.* Pease, 1592
— *v.* Petrie, 1932
— *v.* Prudehome, 1880
— *v.* Turquand, 1628
— *v.* Whitehead, 227, 231
— *v.* Woolley, 1840, 1936, 1943
Jacob's Will, *Re*, 1255
Jacobs *v.* Amyatt, 968
— *v.* Jacobs, 969, 970
— *v.* Miniconi, 778, 860
Jacomb *v.* Harwood, 411, 816, 821, 1619
Jacques *v.* Chambers, 1021, 1303, 1649
Jacquet *v.* Jacquet, 1923, 1927
Jaggard *v.* Jaggard, 951
James, In the goods of, 112, 128
— *Ex parte*, 560, 1749
— *v.* Allen, 923, 924
— *v.* Dean, 1192, 1518, 1540
— *v.* Frearson, 1738
— *v.* Portman, 626
— *v.* Semmens, 1156, 1159
— *v.* Shrimpton, 130
— *v.* Smith, 962
— *v.* Lord Wynford, 1117
Jansen *v.* Jansen, 156, 157
Janson *v.* Bury, 1384
Jarman's Estate, *Re*, 924
Jauney *v.* Sealey, 296, 369
Jay *v.* Johnstone, 1924
— *v.* Robinson, 1652
Jeacock *v.* Falkener, 1164
Jeaffreson's Trusts, *Re*, 967, 1320
Jeale *v.* Titckener, 1120
Jebb *v.* Tugwell, 1040, 1252
Jeffereys *v.* Small, 571
Jefferson *v.* Warrington, 1775
Jeffery, *Re*, 1267
— *v.* Jeffery, 1115
Jeffery *v.* De Vitre, 977
— *v.* Honeywood, 947
Jeffreson *v.* Morton, 1553, 1868
Jeffreys *v.* Connor, 1251
— *v.* Jeffreys, 1026
Jeffries *v.* Alexander, 911, 916
Jeffs *v.* Wood, 1163, 1170, 1171
Jenings *v.* Baily, 1058
Jenkins, In the goods of, 498
— *Re*, 752, 1821
— *v.* Briant, 1881
— *v.* Gaisford, 65
— *v.* Gething, 657
— *v.* Gower, 983, 988, 1327
— *v.* Herries, 989
— *v.* Hughes, 931, 932
— *v.* Jones, 1188
— *v.* Parkinson, 1930
— *v.* Plombe, 761, 1534, 1535, 1536, 1537, 1697, 1720
— *v.* Powell, 1194
Jenkinson, *Re*, 1448
— *v.* Harcourt, 1566
Jenner *v.* Ffinch, 80, 81, 144, 145, 172, 291, 312
— *v.* Turner, 1140
Jennings, *Re*, 1812
— *v.* Gallimore, 999
— *v.* Looks, 1119
— *v.* Newman, 988, 1661, 1664
— *v.* Rigby, 862
Jennison *v.* Lexington (Lord), 726
Jenny *v.* Andrews, 1550
Jepson *v.* Key, 176, 1302
Jernegan *v.* Glass, 1931
Jerningham *v.* Glass, 1931
— *v.* Herbert, 696
Jervis *v.* Lawrence, 908
— *v.* Wolferstan, 1203, 1312, 1313, 1315, 1627
Jervois *v.* Silk, 1271
Jervoise *v.* Jervoise, 676
Jesse *v.* Bennett, 1878
Jesson *v.* Jesson, 1167
— *v.* Wright, 931, 932, 934, 935, 968
Jessopp *v.* Watson, 587, 1880
Jevens *v.* Harridge, 1634
Jewis *v.* Lawrence, 1149
Jewsbury *v.* Mummery, 1206, 1858
Jeyes *v.* Savage, 1114, 1115
Jickling *v.* Bircham, 843, 844
Job *v.* Job, 1535, 1705, 1733, 1772, 1891
Jobson, *Re*, 1095, 1097, 1104
— *v.* Palmer, 1722
Jodrell, *Re*, 953
— *v.* Jodrell, 673
John *v.* Bradbury, 418
Johnson, In the goods of, 104, 197, 199 272, 382

Johnson *Re*, 1519, 1682, 1881, 1901, 1924
— *v.* Baker, 839
— *v.* Ball, 89, 330, 1350
— *v.* Child, 1564
— *v.* Crook, 1090
— *v.* De la Creure, 1257
— *v.* Johnson, 74, 660, 752, 1040, 1086, 1252, 1351, 1828
— *v.* Le Garde, 1644
— *v.* Lyford, 134, 295
— *v.* Milksopp, 1563
— *v.* Mills, 1257
— *v.* Newton, 1718, 1721
— *v.* Oxenden, 1952
— *v.* Prendergast, 1750
— *v.* Simcock, 936
— *v.* Smith, 691
— *v.* Telford, 1305, 1308, 1769, 1942
— *v.* Warwick, 251
— *v.* Webster, 604
— *v.* Witchcott, 1669
— *v.* Woods, 583, 584, 585
Johnston, In the goods of, 366
— *Re*, 638, 1190, 1506
— *v.* Aston, 1883
— *v.* Johnston, 161
— *v.* Swan, 908, 915
Johnstone's Settlement, *Re*, 1168
Johnstone *v.* Beattie, 1398
— *v.* Hamilton, 1342, 1345
— *v.* Lord Harrowby, 1157, 1162, 1512
Jolliffe, *Ex parte*, 467
— *v.* East, 1946
Jones, In the goods of, 69, 70, 77, 192, 385, 455, 841
— *Re*, 885, 887, 888, 1295, 1324, 1433, 1591, 1753, 1820
Jones' Trusts, *Re*, 974
Jones *v.* Alephsin, 1931
— *v.* Beytagh, 378, 379
— *v.* Brain, 1911
— *v.* Bromley, 1137
— *v.* Bruce, 1034, 1582
— *v.* Carter, 1604
— *v.* Cherney, 815
— *v.* Colbeck, 939, 988
— *v.* Davies, 562
— *v.* Evans, 886
— *v.* Flint, 623
— *v.* Foxall, 1295, 1296, 1753, 1755, 1758
— *v.* Goodchild, 380
— *v.* Goodrich, 471
— *v.* Green, 1188
— *v.* Hall, 1327
— *v.* Hill, 1610
— *v.* Howells, 256, 342, 539
Jones *v.* Jones, 464, 479, 800, 1138, 1141, 1911
— *v.* Jukes, 883,
— *v.* Lewes, 1535, 1705
— *v.* Mackilwain, 1092, 1096
— *v.* Mitchell, 1320
— *v.* Morrall, 1750
— *v.* Mossop, 1782
— *v.* Nicholay, 95, 96
— *v.* Ogle, 729, 731
— *v.* Powell, 870, 1768
— *v.* Roe, 352
— *v.* Sefton, 1041, 1045
— *v.* Selby, 686, 691
— *v.* Simes, 703, 1799
— *v.* Southall, 1022, 1080, 1186
— *v.* Strafford (Lord), 422, 423
— *v.* Tanner, 1828
— *v.* Torin, 979
— *v.* Waite, 1129
— *v.* Waller, 504
— *v.* Westcombe, 1134
— *v.* Williams, 918
— *v.* Yarnold, 345
Jopp *v.* Wood, 1111, 1122, 1395, 1398
Jordan, In the goods of, 182, 327
— *v.* Adams, 932
— *v.* Fortescue, 96, 1068
— *v.* Lowe, 973
Joseph, In the goods of, 442
Joseph's Will, *Re*, 1818
Joseph and Webster, *Re*, 1677
— *v.* Lyons, 906
Joslin *v.* Brewet, 1347
Josselyn *v.* Josselyn, 1255, 1272
Joy *v.* Campbell, 1733
Joys, In the goods of, 152
Jubber *v.* Jubber, 1142, 1153
Judd *v.* Judd, 1113
Judkin's Trusts, *Re*, 1267
Juler *v.* Juler, 1344
Jull *v.* Jacobs, 899, 1113, 1325
Jupp, In the goods of, 1040
— *Re*, 961, 1327, 1449
Jury *v.* Woodhouse, 1520

K.

Kampf *v.* Jones, 1024
Kane *v.* Reynolds, 370, 1387
Kavanagh *v.* Morland, 973
Keane, In the goods of, 382
— *v.* Dee, 554
— *v.* Robarts, 806
Kearney *v.* Whitaker, 379
Kearsley *v.* Oxley, 1636
Keates *v.* Burton, 235
Keating *v.* Brooks, 71
— *v.* Keating, 808
Keay *v.* Boulton, 969
Kebble, *Ex parte*, 1270

Keble *v.* Keble, 1836, 1837
Keeling *v.* Brown, 1588
Keen's Executor's case, 1627
Keen *v.* Keen, 295
Keene, In the goods of, 445
Kehoe, In the goods of, 87, 90
Keigwin *v.* Keigwin, 77
Keilway *v.* Keilway, 1378, 1379
Kellick, In the goods of, 81
Kellow *v.* Westcombe, 212, 1836
Kelly *v.* Hammond, 957
— *v.* Powlett, 1044, 1048, 1049
Kelsock *v.* Nicholson, 817, 818
Kemble *v.* Church, 17
Kemp *v.* Andrews, 1774
— *v.* Waddingham, 863
— *v.* Westbrook, 769
Kempton *v.* Cross, 1793, 1794
Kendall, *Ex parte*, 1621, 1623
— *v.* Granger, 923, 924
— *v.* Hamilton, 1618, 1619, 1620
— *v.* Kendall, 1040, 1046, 1052
— *v.* Russell, 1260
Kendall's Trust, *Re*, 1048
Kendar *v.* Milward, 1897
Kennaway *v.* Kennaway, 274, 479
Kennedy *v.* Sedgwick, 937
— *v.* Stainsby, 1346
Kennell *v.* Abbott, 146, 1016, 1319
Kenny *v.* Jackson, 841, 843
Kenrick *v.* Burgess, 209, 344
Kent *v.* Pickering, 894
Kenworthy *v.* Ward, 1326, 1328
Kenyon *v.* Kenyon, 1909
Kermode *v.* Macdonald, 154, 1183
Kerr's Trusts, *Re*, 1080
Kerr *v.* Clinton, 145
— *v.* The Middlesex Hospital, 1058, 1059, 1062
Kerrich *v.* Bransby, 473
Kerrison's Trusts, *Re*, 1272
Kershaw, *Re*, 1572, 1591
Kevern *v.* Williams, 944, 1089
Key *v.* Key, 936
Kidney *v.* Coussmaker, 1307
Kilbee *v.* Sneyd, 1691
Kilcher, In the goods of, 83
Kildare *v.* Hopson, 1750
Kilford *v.* Blaney, 1576, 1578
Killican *v.* Parker, 261
Kilvington *v.* Stevenson, 1781
Kimberley *v.* Tew, 1106, 1111, 1124, 1138, 1259
Kimpton, In the goods of, 70
Kincaid, *Re*, 1277, 1278
Kinch *v.* Ward, 968
Kinderley *v.* Jervis, 561, 1560
Kindleside *v.* Cleaver, 412
— *v.* Harrison, 17, 33, 39
King (The) *v.* St. Dunstan, 649
King's Proctor *v.* Daines, 95, 96, 97
King, In the goods of, 116, 409
— *v.* Asgrave, 402
— *v.* Bennett, 950
— *v.* Bryant, 1948
— *v.* Cleaveland, 979, 995, 996, 1078
— *v.* Cullen, 1122
— *v.* Denison, 1927
— *v.* Foxwell, 1395, 1396
— *v.* Frost, 1334
— *v.* George, 1047
— *v.* Gillard, 315
— *v.* Isaacson, 1096, 1104
— *v.* Jones, 712, 717
— *v.* King, 432, 1910
— *v.* Thom, 764, 1671
— *v.* Tootel, 1162
— *v.* Withers, 771, 1120
— *v.* Wright, 1067
King's Mortgage, *Re*, 1057
Kingdon, *Re*, 152
— *v.* Bridges, 669
— *v.* Nottle, 712, 713, 714, 715, 717
Kingham *v.* Lee, 1743
Kings *v.* Hilton, 1742
Kingsbury *v.* Collins, 624
Kingsley's Trusts, *Re*, 1276
Kinsey *v.* Heyward, 1787, 1788, 1789, 1790, 1844, 1845
Kipping *v.* Ash, 279
Kirby, *Re*, 72
— *v.* Potter, 1022, 1024, 1027
Kircudbright *v.* Kircudbright, 1370, 1371, 1372, 1374
Kirk, *Ex parte*, Bennett, *Re*, 1171
— *v.* Eddowes, 1194, 1198
— *v.* Todd, 1600, 1608
— *v.* Webb, 1897
Kirkbank *v.* Hudson, 915
Kirke *v.* Kirke, 130, 1583
Kirkman's Trusts, *Re*, 1079
Kirkman *v.* Booth, 1688, 1764
— *v.* Miles, 580
Kirkpatrick *v.* Capel, 993
— *v.* Kirkpatrick, 935, 1023
Kirwan's Trust, *Re*, 308, 309
Kitchen *v.* Dixon, 211
— *v.* Ibbetson, 559
Kitto, *Re*, 1941
Kiver *v.* Oldfield, 155
Klœbe, *Re*, 853, 1529
Knapman, *Re*, 1172, 1903
Knapp *v.* Noyes, 1145, 1155
— *v.* Williams, 908
Knatchbull *v.* Fearnhead, 1203, 1206
Knevett *v.* Pool, 629, 630
Knight, *Re*, 176, 178
Knight's Will, *Re*, 1937, 1938
Knight *v.* Boughton, 97

Knight *v.* Cameron, 1096, 1146
— *v.* Cole, 564, 565
— *v.* Cook, 319
— *v.* Davis, 1646
— *v.* De Blaquiere, 1797
— *v.* Ellis, 599, 967, 972
— *v.* Gould, 1082, 1083, 1337, 1338, 1339
— *v.* Knight, 97, 1054, 1103, 1293, 1331
— *v.* Lord Plymouth, 1720
— *v.* Poole, 1330
— *v.* Robinson, 1057
Knights *v.* Quarles, 708, 713
Kniveton *v.* Latham, 1697
Knocker *v.* Banbury, 575
Knolle's case, 727
Knott *v.* Cottee, 1295, 1296, 1717, 1755, 1757
Knowles, *Re*, 1114
Knox *v.* Hotham, 1154
Koeber *v.* Sturgis, 1278
Kooystra *v.* Buyskes, 404
Koster *v.* Sapte, 492
Kramer *v.* Waymark, 778
Kynaston *v.* Kynaston, 1582

L.

LABOUCHERE *v.* Tupper, 1683, 1816
Lacey *v.* Hill, 1309
Lachlan *v.* Reynolds, 936
Lacon *v.* Mertins, 1644
Lacroix, In the goods of, 309
Lacy *v.* Rhys, 530, 539
Laffer *v.* Edwards, 1138
Laidley *v.* Lord Advocate, 542
Lake *v.* Gibson, 572
Laker *v.* Hordern, 953, 957
Lambarde *v.* Older, 1781
Lambe *v.* Eames, 98, 989
Lambell *v.* Lambell, 134, 354
Lambert, In the goods of, 121
— *v.* Austin, 793
— *v.* Lambert, 1028, 1224
Lambert's Estate, *Re*, 323, 347, 348, 350, 606, 661, 664
Lamine *v.* Dorrell, 502
Laming *v.* Gee, 1771, 1772, 1892
Lamkin *v.* Babb, 39
Lampet's case, 615
Lamphier *v.* Despard, 1045, 1582
Lampton *v.* Collingwood, 1616
Lancaster, In the goods of, 162, 180, 182, 327
— *v.* Evors, 1917
Lancaster Society, *Ex parte*, 857, 858
Lancefield *v.* Iggulden, 1565, 1588, 1592,
Land *v.* Devaynes, 1034, 1191
Land Credit Company of Ireland, *Re*, Markwell's case, 1207, 1822
Lander *v.* Weston, 1724
Lane, In the goods of, 196, 203
— *Re*, 1187
— *v.* Drinkwater, 1775
— *v.* Goudge, 1095, 1099, 1106
— *v.* Green, 1018
— *v.* Lord Stanhope, 930
— *v.* Oakes, 660, 663
Laneuville *v.* Anderson, 306
Lang *v.* Lang, 1364
— *v.* Pugh, 1093
Langdale *v.* Briggs, 175, 176, 177, 1301
— *v.* Whitfield, 1054
Langford, In the goods of, 196
— *v.* Gascoyne, 1724, 1728, 1730.
— *v.* Gowland, 924
— *v.* Mahony, 789
Langham, *Re*, 910
— *v.* Sanford, 1345, 1346, 1348, 1349
Langhorn, In the goods of, 139
Langley, In the goods of, 491
— *v.* Hawke, 188
— *v.* Lord Oxford, 802
Langslow *v.* Langslow, 1305
Langston *v.* Langston, 950
— *v.* Ollivant, 1708
Langton *v.* Higgs, 887
Lanoy *v.* Athol, 754, 1273, 1565
Lanphier *v.* Buck, 975, 1076, 1079, 1134, 1328
Landsdowne, Lord, In the goods of, 87
— *v.* Landsdowne, 1296, 1297, 1607
Large's case, 1130
Larner *v.* Larner, 1054
Larpent *v.* Sindry, 305, 306
Lasbury *v.* Newport, 988
Lascelles *v.* Jobber, 846
Lashbrook *v.* Cock, 1328
Lassence *v.* Tierney, 1155
Lasseur *v.* Tyrconnel, 297
La Terriere *v.* Bulmer, 1243, 1245
Latimer's, Dame, case, 1051
Lauderdal Peerage Case, 1393
Laundy *v.* Williams, 1240, 1254, 1289
Laurie *v.* Clutton, 1025, 1487
Laury *v.* Aldred, 220
Law, *Ex parte*, 261
— *v.* Campbell, 405
— *v.* Law, 1918
— *v.* Thompson, 1087, 1090
Lawrence *v.* Beverley, 603
— *v.* Beverleigh, 738
— *v.* Lawrence, 732
Laws, In the goods of, 259
Lawson *v.* Crofts, 426, 506
Lawson *v.* Hudson, 1568
— *v.* Lawson, 689, 690
— *v.* Stitch, 1022
Lawton *v.* Lawton, 623, 626, 645, 646, 651, 653

Lawton *v.* Salmon, 646, 653
Laxton *v.* Eedle, 1096
Lay, In the goods of, 105
Layfield *v.* Layfield, 219
Lazonby *v.* Rawson, 1855, 1894
Lea *v.* Libb, 84
Leach, In the goods of, 405
— *v.* Jay, 930
Leacroft *v.* Maynard, 1162, 1512
Leak *v.* M'Dowall, 1328, 1341
Leake *v.* Robininson, 947, 1093, 1096, 1101, 1104, 1113, 1115, 1117, 1319
Learoyd *v.* Whiteley, 1705
Leask, *Re*, 1904
Le Bret *v.* Papilion, 1849, 1850
Le Breton *v.* Fletcher, 32
Le Briton *v.* Le Quesne, 366, 405
Lechmere *v.* Brotheridge, 54
— *v.* Earl of Carlisle, 583, 603
— *v.* Lechmere, 583
Ledgard *v.* Garland, 323
Ledsome *v.* Hickman, 1083
Ledward *v.* Hassell, 1133
Lee *v.* Brown, 1262, 1264, 1275
— *v.* Cox, and D'Aranda, 1262, 1364, 1365
— *v.* Egremont, 1174
— *v.* Flood, 1208, 1623
— *v.* Lee, 988
— *v.* Moore, 242, 298
— *v.* Nuttall, 884, 892
— *v.* Pain, 1015, 1017, 1081, 1083, 1156, 1158, 1159, 1161
— *v.* Risdon, 625
Leech, *v.* Bates, 77, 94
Leeds Banking Company, *Re*, 1628, 1683
Leeds, Duke of, *v.* Amherst, 1066
Leeke, *Ex parte*, 1898
Leeke, *v.* Bennett, 1253
Leeman *v.* George, 282
Leeming, *Re*, 590, 1566
— *v.* Sherratt, 1082, 1093, 1096, 1097, 1099, 1109, 1334
Lees *v.* Massey, 980, 988
— *v.* Moseley, 931, 973
— *v.* Sanderson, 1729
Leese, In the goods of, 140, 198, 327
Leeson, In the goods of, 377
Le Farrant *v.* Spencer, 1049
Legge *v.* Asgil, 1052, 1317, 1319
Leggott *v.* Great Northern Railway Co., 707, 709
Legh *v.* Holloway, 1697
— *v.* Legh, 1585
Le Grice *v.* Finch, 1028, 1030, 1186
Leigh, In the goods of, 135
— *v.* Byron, 956, 957
— *v.* Leigh, 983, 1081
— *v.* Mosley, 1327
— *v.* Norbury, 974, 1386
Leigh *v.* Thornton, 1640
Leighton *v.* Baillie, 1317
— *v.* Leighton, 843, 845
La Jeune *v.* Budd, 1144
Lemage *v.* Goodban, 138, 139, 144, 153
Leman *v.* Newnham, 1568
Le Marchant *v.* Le Marchant, 990
— *v.* Commissioners of Inland Revenue, 1468
Le Mason *v.* Dixon, 696, 698, 1602
Lemayne *v.* Stanley, 66
Lemme, In the goods of, 299, 306
Lenden *v.* Blackmore, 1385
Lenox *v.* Lenox, 1136
Leonard *v.* Leonard, 1357
— *v.* Simpson, 1847, 1865, 1866
Leonino *v.* Leonino, 1572, 1573
Lepard *v.* Vernon, 817, 818
Lepine, *Re*, 1316
— *v.* Bean, 953
Le Sage *v.* Coussmaker, 1656
Lesingham's Trusts, *Re*, 953
Leslie *v.* Baillie, 1388
— *v.* Leslie, 1291, 1292
Lethbridge *v.* Chapman, 1789
— *v.* Thurlow, 1166, 1508
Lett *v.* Randall, 1060, 1061, 1362
Le Vasseur *v.* Scratton, 744
Leven, In the goods of, 191
Leventhorp *v.* Ashbre, 598
Leverington, In the goods of, 83, 84
Levy *v.* Sale, 1615
Lewes's Trust, *Re*, 265, 1284
Lewes *v.* Lewes, 1154
Lewin *v.* Lewin, 1022, 1221, 1222
Lewin's Trust, *Re*, 1280
Lewis, In the goods of, 118, 126, 134
— *Re*, 581
— *v.* Allenby, 915
— *v.* Duncombe, 1927
— *v.* Lewis, 83, 1572, 1769
— *v.* Mathews, 1151
— *v.* Morris, 1385
— *v.* Nangle, 1569
— *v.* Nobbs, 1731
— *v.* Pead, 33
— *v.* Templer, 1330
— *v.* Trask, 1938, 1939
L'Fitt *v.* L'Batt, 325, 482
Lichfield *v.* Baker, 1040, 1252
Life Association of Scotland *v.* Siddal, 1278, 1283
Liford's case, 621
Lightfoot *v.* Burstall, 1324
Lighton, In the goods of, 197, 199
Lilford (Lord) *v.* Att.-Gen. 1462
— *v.* Keck, 1302
Lill *v.* Lill, 1330
Lillcott *v.* Compton, 1044
Lillie *v.* Lillie, 134

Limbery *v.* Mason, 127
Limbrey *v* Gurr, 922
Limerick, In the goods of, 87
Limmer *v.* Every, 205, 410
Limpus *v.* Arnold, 1370
Limver *v.* Evoire, 410
Lincoln *v.* Allen, 1750
— *v.* Pulham, 947, 1386
— *v.* Windsor, 1764, 1943
— *v.* Wright, 1734
Lindgren *v.* Lindgren, 1067, 1069
Lindsay *v.* Lindsay, 158
Lingan *v.* Sowray, 580
Linley *v.* Taylor, 910
Linthwaite *v.* Galloway, 403
Lipscombe *v.* Lipscombe, 1572
Lister *v.* Bradley, 1099, 1104
— *v.* Smith, 95, 276, 284
— *v.* Tidd, 974
Little *v.* Plant, 1836
Littlehales *v.* Gascoyne, 1727, 1750
Littlejohns *v.* Household, 1330
Littleton *v.* Hibbins, 854, 880
Liverpool Borough Bank *v.* Walker 1618, 1619, 1621
Livesay *v.* Redfern, 1021, 1032
Livesey *v.* Livesey, 948, 950, 1313
Livock, In the goods of, 124
Llanwarne, In the goods of, 885
Llewellin, *Re*, 1941
Llewellyn, *Re*, 1811
Llewellyn's Trusts, *Re*, 1245, 1246, 1250
Lloyd, In the goods of, 331, 582, 1193
— *Re*, 1819
— *v.* Branton, 1140, 1142
— *v.* Crispe, 810
— *v.* Finlayson, 478
— *v.* Harvey, 1198
— *v.* Lloyd, 1100, 1109, 1119, 1131, 1141, 1324
— *v.* Mason, 854, 1282
— *v.* Ogleby, 779
— *v.* Pughe, 670
— *v.* Roberts, 76, 77, 91
— *v.* Tench, 1377, 1382, 1384
— *v.* Williams, 1281
Lloyd's *v.* Harper, 1660
Loane *v.* Casey, 889, 894
Lobley *v.* Stocks, 1155
Loch *v.* Bagley, 938
Lock *v.* Lake, 355, 358
— *v.* Loggin, 824
— *v.* Venables, 1248
Locke *v.* Crosse, 1181
— *v.* Dunlop, 942
— *v.* James, 130
— *v.* Lamb, 1109
Locker *v.* Bradley, 1106, 1111, 1138
Lockhart *v.* Hardy, 1563
Lockier *v.* Paterson, 698
— *v.* Smith, 1178
Loder *v.* Loder, 947
Lodge *v.* Pritchard, 1619
Loffus *v.* Maw, 109, 476
Loftus, In the goods of, 234, 407
Logan *v.* Bell, 160
Logan *v.* Fairlie, 297, 1497, 1498
Lomas *v.* Wright, 870, 954, 1586
Lomax *v.* Holmden, 950
— *v.* Lomax, 1582
Londesborough, Lord, *v.* Somerville, 1514
London, Bishop of, *v.* M'Neil, 458
— — *v.* Webb, 621
— Mayor of, *v.* Russell, 1158
— University *v.* Yarrow, 915
London Chartered Bank of Australia, *v.* Lempriere, 1550
London Provincial Bank *v.* Boyle, 1652
Long *v.* Aldred, 49
— *v.* Blackall, 987, 999
— *v.* Hughes, 1221
— *v.* Long, 1292
— *v.* Ricketts, 1143
— *v.* Short, 1032, 1565, 1589
— *v.* Symes, 227, 230, 231, 232
— *v.* Wakeling, 466
— *v.* Watkinson, 999, 1003, 1007
Longbottom *v.* Berry, 642
— *v.* Longbottom, 1830
Longchamp *v.* Fish, 14
Longdendale Cotton Co., *Re*, 1908
Longmore *v.* Broom, 979, 1750
Longstaff *v.* Rennison, 912, 914
Longworth *v.* Bellamy, 961
Lonsdale, Lord, *v.* Berchtoldt, 1154
Loomes *v.* Stotherd, 851, 889
Loosemore *v.* Knapman, 1565
Lopes *v.* Hartley, 492
Lord Advocate *v.* Roberts' Trustees, 1446
Lord *v.* Godfrey, 1252
— *v.* Colvin, 1394
— *v.* Lord, 1644
— *v.* Purchase, 1884
— *v.* Sutcliffe, 1158
— *v.* Wightwick, 1583
— *v.* Wormleighton, 261, 1802
Lorenz, *Re*, 1824
Lorimer, *Re*, 1820
— *v.* In the goods of, 226, 234
— *v.* Lorimer, 669
Loring *v.* Thomas, 952, 1077, 1078
Loscombe *v.* Wintingham, 919, 924, 1302
Louch *v.* Peters, 1507, 1508
Lougher *v.* Williams, 711
Lovat (Lord) *v.* Duchess of Leeds, 1508
— *v.* Lord Ranelagh, 811
Love, *Re*, 1937, 1938
— *v.* Gaze, 1343, 1349

Love, *v.* Honeybourne,
— *v.* L'Estrange, 1093
Loveday *v.* Hopkins, 983
Lovegrove *v.* Cooper, 1549
— *v.* Lewis, 414
Lovelace, *Re*, 1449, 1450, 1503
Lovell and Brady *v.* Cox, 419
Lovesay *v.* Smith, 1658
Lovett, *Re*, 1843, 1912, 1914
— *v.* Harkness, 281
Lovett *v.* Lovett, 40, 1281
Lovie's, Leonard, case, 598
Low *v.* Carter, 750
— *v.* Smith, 969
Lowe, In the goods of, 198
— *v.* Fairlie, 297
— *v.* Joliffe, 32
— *v.* Peskett, 1181, 1536, 1549
— *v.* Thomas, 1053, 1054
Lowis *v.* Rumney, 1699
Lowndes *v.* Lowndes, 1287
— *v.* Stone, 970
Lowry, In the goods of, 192
— *v.* Fulton, 1708, 1724, 1737, 1912
Lowson *v.* Copeland, 1702
Lowther *v.* Cavendish, 1127, 1128
— *v.* Condon, 1120
Loy *v.* Duckett, 851, 756
Loyd *v.* Spillett, 1139
Lucas's Will, *Re*, 1076
Lucas *v.* Brandreth, 984
— *v.* Carline, 1087
— *v.* Jenner, 1862
— *v.* King, 1273
— *v.* Lucas, 376, 668
— *v.* Williams, 1671
Lucena *v.* Lucena, 937, 1332
Lucy *v.* Levington, 713, 716
— *v.* Walrond, 1678
Luddy, *Re*, 1126
Ludlow, In the goods of, 1045
Luffman, In the goods of, 139, 272
Luke, In the goods of, 87
Lumley *v.* Hutton, 1742
Lumsden *v.* Fraser, 581
Lush, In the goods of, 190
Lushington *v.* Boldero, 622
— *v.* Onslow, 114
— *v.* Sewell, 1067
Lutkins *v.* Leigh, 1562, 1563, 1564, 1587
Lutwyche *v.* Lutwyche, 1372
Lyall *v.* Lyall, 1446, 1503
Lyddall *v.* Dunlapp, 1635, 1639
Lyddon *v.* Ellison, 951, 1200
Lyde *v.* Russell, 658
Lygon *v.* Coventry, 1273
Lynall's Trusts, *Re*, 913
Lynch *v.* Bellew, 195, 202
— *v.* Paraguay, Government of, 1387
Lyne's Estate, *Re*, 1214
Lyne's Trust, *Re*, 960
Lynn *v.* Beaver, 1347, 1348, 1349
Lyon *v.* Baker, 1764
— *v.* Colville, 1157, 1531, 1532
— *v.* Mitchell, 966, 972
Lyons (Mayor of) *v.* Adv.-Gen. of Bengal, 924
— (Mayor of) *v.* E. Ind. Co., 921
Lysaght *v.* Edwards, 1644, 1645, 1646
Lyse *v.* Kingdon, 1935, 1941
Lyth *v.* Ault, 1623
Lyttleton *v.* Cross, 882
Lywood *v.* Kimber, 976

M.

MAAS *v.* Sheffield, 48
Mabbett, *Re*, 1061
Maberly *v.* Turton, 1272, 1273
M'Adam *v.* Walker, 22
Macartney *v.* Blundell, 1630
Macaulay *v.* Philips, 751, 752
M'Cabe, In the goods of, 125, 168
M'Carogher *v.* Whieldon, 1167, 1196
Machu, *Re*, 1130
M'Clure *v.* Evans, 1199
M'Cleland *v.* Shaw, 1579
M'Clellan, *Re*, 1944
M'Cormick *v.* Garnett, 1175, 1283
— *v.* Grogan, 1350
M'Culloch *v.* Dawes, 1699
McDermott *v.* Kealey, 1270, 1291
— *v.* Wallis, 1329
M'Donald *v.* Bryce, 1058, 1293, 1330
Macdonald *v.* Carrington, 767, 1782, 1833
— *v.* Irvine, 1038, 1039, 1040, 1251, 1252
— *v.* Walker, 830
M'Donnell *v.* Prendergast, 231, 390
M'Dougall *v.* Roberston, 783
McEwan *v.* Crombie, 1938
McGowan, In the goods of, 459
M'Gregor *v.* M'Gregor, 975, 1082, 1326, 1328
McHenry *v.* Lewis, 1801
Mackay *v.* Mackreth, 717
McKechnie *v.* Vaughan, 1017
Mackell *v.* Winter, 1090
Mackenzie *v.* Mackenzie, 998, 1156
— *v.* Taylor, 1715, 1947
— *v.* Whitworth, 813
Mackett *v.* Mackett, 990, 1409
Mackie *v.* Mackie, 1039, 1247
Mackinnon *v.* Peach, 1081, 1158
— *v.* Sewell, 1135
Mackintosh *v.* Barber, 807, 823
— *v.* Trotter, 658
M'Lachlan *v.* Taitt, 1106

Maclaren *v.* Stainton, 1248, 1303, 1526
Maclean *v.* Dawson, 446, 1915
M'Lean *v.* Longlands, 670
M'Leod *v.* Annesley, 1705
— *v.* Drummond, 561, 802, 803, 806
M'Leroth *v.* Bacon, 984, 989
Macleur *v.* Macleur, 248
M'Mahon *v.* Burchell, 1175
— *v.* Rawlings, 297
M'Murdo, In the goods of,
M'Myn, *Re*, 836, 1655
Macnamara *v.* Jones, 1769
M'Neillie *v.* Acton, 1689, 1816
Macnichol, *Re*, 1530
Macnin *v.* Coles, 381
Macoubrey *v.* Jones, 951
Macpherson *v.* Macpherson, 1243, 1245, 1247, 1727
McRea, *Re*, 1907, 1909, 1945
Macreight, *Re*, 1397
M'Veagh, *Re*, 1887
M'Vicar, In the goods of, 160
Madan *v.* Taylor, 1334
Maddison *v.* Alderson, 109
— *v.* Andrew, 773
— *v.* Chapman, 1305
Maddock, In the goods of, 83, 84
— *v.* Legg, 974
Maggi, *Re*, 858, 861
Mahon *v.* Savage, 980, 981
Mainwaring *v.* Baxter, 1284
— *v.* Beevor, 944
Maitland *v.* Adair, 1073
Major *v.* Lansley, 744
— *v.* Major, 851
— *v.* Williams, 168
Malcolm *v.* Malcolm, 937
— *v.* Martin, 1294, 1295, 1296, 1386
— *v.* O'Callaghan, 1142, 1143
Malen, In the goods of, 71
Maley, In the goods of, 121
Maltass *v.* Maltass, 304, 305, 1387, 1392
Manby *v.* Manby, 1843
Manchester and Southport Railway, *Re*, 582
Mander, *Re*, 186
Mangin *v.* Mangin, 1055
Mangey *v.* Hungerford, 672
Manly, In the goods of, 189
Mann, *Ex parte*, 1173
— In the goods of, 69, 301, 451
— *v.* Burlingham, 915
— *v.* Copeland, 1021, 1032, 1583
— *v.* Fuller, 1157, 1162
— *v.* Lang, 1855
— *v.* Thompson, 941, 942, 944
Manner's *v.* Furze, 1881
— *v.* Mew, 806
Manning's Case, 615, 1253
Manning, *Re*, 1899
— *v.* Herbert, 1120
— *v.* Knapp, 370
— *v.* Purcell, 483, 1049, 1052, 1698
— *v.* Spooner, 1532, 1591, 1592
— *v.* Thesiger, 1156
Mannox *v.* Greener, 1584
Mansel, *Re*, 1899, 1941
Mansfield *v.* Shaw, 281
Manton *v.* Tabois, 1045, 1186, 1187
Mapp *v.* Ellcock, 1345
Mara *v.* Quinn, 1853, 1863
Maraver, In the goods of, 59, 303
March, *Re*, 961, 1317, 1449
— *v.* Att.-Gen., 909
— *v.* Fowke, 1581
— *v.* Head, 1280
— *v.* Russell, 1205, 1208, 1313, 1314
Mardall *v.* Thellusson, 1781, 1846
Margary *v.* Robinson, 68, 71
Marlborough, Duke of, *v.* Godolphin, 1080
— Executors of, *v.* Widmore, 1786
Marples *v.* Bainbridge, 1141
Marrett, *Re*, 1395
Marriot *v.* Marriot, 468, 474, 478
— *v.* Thompson, 889
Marriott *v.* Abell, 1330, 1331
Marris *v.* Burton, 1510, 1511
Marsden, *Re*, 1691, 1876, 1898
— *v.* Kent, 1718, 1719
— *v.* Saville Street Foundry Co., 724
Marsh, *Re*, 1322
— *v.* Evans, 1222
— *v.* Hunter, 1717
— *v.* Marsh, 73, 85, 170, 317, 982
— *v.* Tyrrell, 34, 41, 53
Marshal *v.* Crutwell, 669
Marshall, In the goods of, 444
— *v.* Baker, 975
— *v.* Blew, 679
— *v.* Bremmer, 1039, 1252
— *v.* Broadhurst, 763, 1597, 1689
— *v.* Collett, 1003, 1004
— *v.* Crowther, 1247
— *v.* Holloway, 1270, 1647, 1648, 1765
— *v.* Willder, 1862
Marston *v.* Downes, 1858
— *v.* Roe dem. Fox, 161
Martelli *v.* Holloway, 940
Martin, In the goods of, 58, 82, 158, 204, 323
— *v.* Crompe, 734
— *v.* Crump, 1774
— *v.* Drinkwater, 1157, 1161
— *v.* Fuller, 255, 342

Martin *v.* Glover, 1002, 1385
— *v.* Hobson, 1065
— *v.* Holgate, 975, 1079
— *v.* Laking, 319
— *v.* Lee, 940
— *v.* Martin, 1090, 1269, 1273, 1291, 1292
— *v.* Rebow, 1346
— *v.* Robinson, 281
— *v.* Roe, 1612
— *v.* Swannell, 971
Martindale, In the goods of, 400
Martineau *v.* Rede, 379
— *v.* Rogers, 937
Marzetti *v.* Williams, 1632
Maskeline *v.* Harrison, 427
Mason's Will, *Re*, 1056, 1086
Mason, *Re*, 1212, 1213
— *v.* Bateson, 957
— *v.* Bogg, 1587
— *v.* Broadbent, 1927
— *v.* Clarke, 947, 977
— *v.* Farnell, 1227
— *v.* Lambert, 1609
— *v.* Morgan, 739
Masonic & General Life Assurance Co., *Re*, 256, 1803
Massey *v.* Banner, 1704, 1721
— *v.* Hudson, 773
Master *v.* Laprimaudaye, 1080, 1324
Masterman *v.* Maberley, 94, 95, 138
Masters *v.* Barnes, 1913, 1914
— *v.* Masters, 917, 1156, 1159, 1220
Matchwick *v.* Cock, 941
Mather *v.* Fraser, 642, 646, 649, 653
— *v.* Scott, 914
— *v.* Thomas, 1057
Mathews *v.* Mathews, 1163, 1164, 1166
Matson *v.* Swift, 547, 548, 549, 580
Mattheson *v.* Hardwicke, 1567
Matthews *v.* Brise, 1709, 1720
— *v.* Maude, 1302
— *v.* Newby, 1952
— *v.* Palmer, 1909
— *v.* Paul, 947, 948, 949
— *v.* Phillips, 1788
Matthias, In the goods of, 88
Matthison *v.* Clarke, 1764
Mattison *v.* Tanfield, 1385
Maud *v.* Maud, 936, 978, 1123
Maundy *v.* Maundy, 38
Maxwell *v.* Maxwell, 1308, 1584
— *v.* Wettenhall, 1286
May, In the goods of, 167
— *Re*, 884, 892
— *v.* Bennett, 1212, 1213, 1259
— *v.* Dowse, 1887
— *v.* Lewin, 1347
— *v.* Newton, 1920, 1921, 1922
May *v.* Wood, 1095
— *v.* Woodward, 1617
Maybank *v.* Brooks, 1075
Maychell, In the goods of, 384
Mayd, In the goods of, 158
— *v.* Field, 1550
Mayer, In the goods of, 382
— *v.* Murray, 1772, 1891
Mayhew, *Re*, 1936
— *v.* Newstead, 404
Maynard *v.* Wright, 937, 975
Mayor of Berwick *v.* Murray, 1756
— Faversham *v.* Ryder, 915, 918
— London *v.* Russell, 1158
— Lyons *v.* Adv.-Gen. of Bengal, 924
— — *v.* E. I. Company, 921
Mayott *v.* Mayott, 965
Meacher *v.* Young, 1272
Mead, *Re*, 686, 689
— *v.* Orrey, 802, 1227, 1232
Meadows *v.* Duchess of Kingston, 470, 473
— *v.* Parry, 1134
Measure *v.* Carleton, 1024
Medland, *Re*, 1810
Medlicot *v.* Bowes, 1903
Medlycott *v.* Asheton, 132
Meek *v.* Devenish, 580
— *v.* Kettlewell, 1658
Megit *v.* Johnson, 370, 1386
Megson *v.* Hindle, 954, 957
Meinertzagen *v.* Walters, 1197 1371
Meldrum *v.* Scorer, 1917
Melhuish *v.* Milton, 474
Melland *v.* Gray, 1751, 1753
Mellick *v.* Asylum, 920
Mellor *v.* Daintree, 933, 935
Mence *v.* Bagster, 1326
— *v.* Mence, 1348
Mendes *v.* Guedalla, 1721, 1730
Mendham *v.* Williams, 1414
Mentney *v.* Petty, 360, 1382
Menzies *v.* Pulbrook, 280, 377, 378, 382
Mercer, In the goods of, 87
— *v.* Hall, 1144
— *v.* Morland, 363
Merchant *v.* Driver, 567, 1692, 1865
Merchants' Bank *v.* Birch, 1874
Meredith's Trusts, *Re*, 1321, 1322, 1324
Meredith, In the goods of, 152
— *v.* Farr, 956
Merrick's Trusts, *Re*, 1078, 1079
Merrill *v.* Morton, 963
Merritt, In the goods of, 152
Merry *v.* Hill, 1109
— *v.* Ryves, 1144
Merryweather *v.* Turner, 276, 277
Mersey Steel and Iron Co. *v.* Naylor, 858
Meryon *v.* Collett, 1005

Messenger *v.* Andrews, 1153
— *v.* Clarke, 661
Metcalfe, In the goods of, 441
— *Re*, 1210
— *v.* Metcalfe, 1131
Metham *v.* Duke of Devon, 954
Methuen *v.* Methuen, 145, 171, 291
Methuen and Blore's Contract, *Re*, 1317
Mette *v.* Mette, 160
Metters *v.* Brown, 343
Meux *v.* Bell, 1727
Mews *v.* Mews, 668, 670
Meyer *v.* Montriou, 1883
— *v.* Simonson, 1245, 1249
— *v.* Townsend, 1138
Meyrick *v.* Anderson, 217
Michel's Trusts, *Re*, 902
Michell *v.* Michell, 1581, 1582
— *v.* Wilton, 1212
Michlemore *v.* Mudge, 744
Micklethwaite, *Re*, 1446
Middlehurst *v.* Johnson, 289
Middleton, In the goods of, 130, 131, 354, 414
— *Re*, 1947
— *v.* Cater, 916
— *v.* Clitherow, 919
— *v.* Dodswell, 1881
— *v.* Messenger, 944
— *v.* Middleton, 1564
— *v.* Poole, 1883
— *v.* Sherburne, 473
— *v.* Spicer, 1342
Middleton's case, 343, 553
Mid Kent Railway, *Re*, 1113
Midland Counties Railway *v.* Oswin, 591
Milan Tramways Co., *Re*, 1780
Miles *v.* Durnford, 806, 827
— *v.* Harrison, 851
— *v.* Miles, 177, 1302
Millar *v.* Sheppard, 287
Millard *v.* Bailey, 1070, 1303
Miller, In the goods of, 322
— *v.* Brown, 49
— *v.* Huddlestone, 1212, 1213, 1214, 1220, 1223
— *v.* James, 302
— *v.* Little, 1024
— *v.* Miller, 686, 687
— *v.* Race, 1042
— *v.* Sheppard, 322
— *v.* Thurgood, 1305
— *v.* Travers, 1013, 1067
— *v.* Warren 1083
— *v.* Washington, 365
Milligan, In the goods of, 106, 460
Mills, *Re*, 1324, 1811
— *v.* Brown, 1035, 1037
— *v.* Drewett, 1212, 1922
— *v.* Milward, 120
Mills *v.* Robarts, 1291, 1293
Milltown *v.* Trench, 1288
Milne *v.* Gilbart, 983
Milner *v.* Harewood, 1002, 1542
— *v.* Mills, 1643
— *v.* Milner, 1068, 1127
Milnes, In the goods of, 441
— *v.* Foden, 94, 96
— *v.* Slater, 930, 1346
Milroy *v.* Lord, 670
— *v.* Milroy, 1099, 1100
Milward *v.* Moore, 825
Miner *v.* Baldwin, 1212
Minor's Trusts, *Re*, 1096, 1108
Minors *v.* Battison, 1090, 1091
Minshull, In the goods of, 385
Minter *v.* Wraith, 988, 999
Mirehouse *v.* Scaife, 1588
Mitchell's Estate, *Re*, 910
Mitchell, In the goods of, 316
— *Re*, Cunningham, *Ex parte*, 1398
— *v.* Gard, 312
— *v.* Holmes, 375
— *v.* Mitchell, 1048
— *v.* Moorman, 375
— *v.* Thomas, 290
Mitchelson *v.* Piper, 883, 884
Mitcheson, In the goods of, 130, 134
Mitford *v.* Mitford, 753
— *v.* Reynolds, 918, 920, 921, 922
Mocatta *v.* Lindo, 1114
Moert *v.* Moessard, 1830
Moffat *v.* Van Millingen, 787
Moffett *v.* Bates, 1649
Moggridge *v.* Thackwell, 902, 903, 924, 1157
Mole *v.* Mole, 1270, 1291
Molony *v.* Kennedy, 54, 661, 755
Molyneux *v.* Rowe, 154, 1047
Monck *v.* Monck, 1195, 1199
Monday, In the goods of, 323
Moneypenny *v.* Bristow, 165
— *v.* Brown, 39
Monk, *Re*, 877, 1611
Monkhouse *v.* Holme, 1104
Monsell *v.* Armstong, 423
Montacute, Lady, *v.* Maxwell, 666
Montagu *v.* Nucella, 935, 978
Montague *v.* Montague, 1194, 1195
— *v.* Sandwich, 1054
Montefiore *v.* Guedalla, 1196, 1197
Montford *v.* Cadogan, 1613
Montgomerie *v.* Woodley, 1293
Montgomery *v.* Montgomery, 973
Monypenny *v.* Bristow, 1604
Moodie *v.* Bannister, 1700, 1800
— *v.* Garnance, 726
Moody, *Ex parte*, 1898
Moons *v.* De Bernales, 477, 1803

Moor *v.* Barham, 358, 1382
— *v.* Raisbeck, 582, 1193
Moore, In the goods of, 349, 495, 1881, 1953
Moore, *Re*, 1128, 1129
— *v.* Barber, 54, 666
— *v.* Darell, 1392, 1399
— *v.* Darton, 688, 692
— *v.* Frowd, 1760, 1942
— *v.* Godfrey, 1254
— *v.* Hudson, 1931
— *v.* King, 79, 88
— *v.* Meynell, 1931
— *v.* Moore, 152, 670, 671, 688, 1034, 1041, 1042, 1186, 1571
— *v.* Petchell, 1923
— *v.* Prior, 1911
— *v.* Whitehouse, 819
Moorfoot *v.* Chivers, 1869
Moorhouse *v.* Lord, 1394, 1396, 1397
Mordaunt *v.* Benwell, 585
— *v.* Clarke, 227, 261
— *v.* Hussey, 1348
Morant, In the goods of, 232, 234
More's, Sir William, case, 811
— Trust, *Re*, 1086, 1125, 1162
Moresby, In the goods of, 147
Moreton's case, 699, 700, 762
Moreton *v.* Hopkins, 1607
Morgan, In the goods of, 95, 97, 148, 366
— *Re*, 561, 562, 803, 806, 1519, 1683
— *v.* Annis, 51, 477
— *v.* Earl of Abergavenny, 619
— *v.* Britten, 1327
— *v.* Knight, 578
— *v.* Malleson, 670
— *v.* Morgan, 1038, 1039, 1040, 1245, 1252
— *v.* Middlemiss, 1068
— *v.* Rarey, 1603
— *v.* Thomas, 845, 971, 978, 1186
Morice *v.* Bishop of Durham, 922, 923, 924
Morier, *Ex parte*, 1783, 1846
Morison *v.* Morison, 1765
Morley *v.* Bird, 1027, 1080
— *v.* Polhill, 715, 716
— *v.* Rennoldson, 1141
Morrall *v.* Sutton, 934
Morrell *v.* Morrell, 106, 298, 315, 316
Morrice *v.* Aylmer, 176, 1056
— *v.* Bank of England, 1549
Morrieson, *Re*, 962
Morris's Estate, *Re*, 889
Morris, In the goods of, 418, 495
— *v.* Barrett, 572
— *v.* Burroughs, 1139, 1376
— *v.* Freeman, 282
— *v.* Howes, 994, 998, 1003, 1006
Morris *v.* Livesay, 814
— *v.* Livie. 1217, 1261, 1507, 1897
— *v.* Morris, 1879
Morrison, In the goods of, 407
— *v.* Martin, 1017
Morritt *v.* Douglas, 78
Morse's Trust, *Re*, 1122
Morse *v.* Morse, 943, 947
— *v.* Tucker, 1554
Mortimer, *Re*, 1334
— *v.* Hartley, 936
— *v.* Ireland, 830
— *v.* Mortimer, 1880
— *v.* Paull, 430
— *v.* West, 931, 957
— *v.* Slater, 987
Mortimore *v.* Mortimore, 987
Mortlock's Trust, *Re*, 1131
Mortlock *v.* Leathes, 1883
Morton, In the goods of, 115, 331
— *v.* Hopkins, 700
Morwan *v.* Thompson, 58
Moseley's Trusts, *Re*, 1116
Moseley *v.* Rendell, 789, 1521, 1779
Moses *v.* Crafter, 540
— *v.* Levi, 343, 1731
Mosley *v.* Ward, 1295, 1755
Moss *v.* Bardwell, 192
— *v.* Cooper, 330, 331, 1350
— *v.* Dunlop, 987
— *v.* Harter, 1323
Mostyn *v.* Mostyn, 1011
Moule *v.* Garrett, 1632
Moulson *v.* Moulson, 1167
Mounsey *v.* Blamire, 970
Mountain *v.* Bennett, 33, 37, 40
Mountford *v.* Gibson, 218, 221, 222, 223, 344
Mousley *v.* Carr, 1751, 1752
Moyle *v.* Moyle, 1718
Mucklow *v.* Fuller, 1153, 1691, 1703, 1735
Mudway *v.* Croft, 31
Muggeridge, *Re*, 1626
Mules *v.* Jennings, 1489
Mullick *v.* Mullick, 839
Mullins *v.* Smith, 1021, 1026, 1027, 1045
Munch *v.* Cockerell, 1724, 1755
Munday *v.* Slaughter, 285
Munn *v.* Dunkin, 802
Munro *v.* Munro, 1393
Munroe *v.* Douglas, 1395, 1397
Munt *v.* Stokes, 766
Murguia, In the goods of, 205, 406
Murkin *v.* Phillipson, 1120
Murray *v.* Addenbrook, 1099
— *v.* Blatchford, 821
— *v.* E. I. Company, 552, 766, 1785
— *v.* Lord Elibank, 751, 1281, 1283
— *v.* Jones, 939, 1134

Murray *v.* Tancred, 1096
Mursley *v.* Grandborough, 565
Murton *v.* Markby, 1040, 1252
Musgrove *v.* Brooke, 1130, 1139
Muskett *v.* Eaton, 1109, 1113
Musson *v.* May, 874
Mussoorie Bank *v.* Raynor, 98
Mustapha, *Re*, 686
Musther, *Re*, 1076, 1077
Mutlow *v.* Bigg, 580
— *v.* Mutlow, 1549
Myddleton *v.* Rushout, 842, 843
Myers *v.* Perigal, 910
Mynn *v.* Robinson, 41, 53, 287
Mytton *v.* Mytton, 1028

N.

NANNY *v.* Martin, 751
Napier, In the goods of, 499
Napoleon Bonaparte, *Re*, 263, 324
Nares, In the goods of, 355
Nash *v.* Nash, 749
— *v.* Morley, 923
— *v.* Yelloly, 312
Nation *v.* Tozer, 785, 786, 820, 1635, 1642
Natt, *Re*, 1368
Nayler, In the goods of, 350, 821
— *v.* Collinge, 642
Naylor *v.* Stainsby, 193
— *v.* Wetherell, 1304
Neagle *v.* Castlehaven, 322
Neal *v.* Hanbury, 697
Neate *v.* Pickard, 169, 172
Neathway *v.* Reed, 1330
Nector *v.* Gennet, 1203
Needham's case, 1176, 1178
Needham *v.* Croke, 762
Neeves *v.* Burrage, 812
Negus *v.* Coulter, 909
Neil, *Re*, 1899
Nelson *v.* Carter, 1031
— *v.* Oldfield, 37
— *v.* Page, 1573, 1574
— *v.* Serle, 214, 1668
Nelthorpe *v.* Biscoe, 1312
Nevill *v.* Boddam, 1330
— *v.* Nevill, 1154
Neville *v.* Fortesque, 1039, 1252
Nevin *v.* Drysdale, 1167
New *v.* Bonaker, 924
— *v.* Jones, 1760
Newbegin *v.* Bell, 851, 1224
Newbold, In the goods of, 353
Newbolt *v.* Price, 1011
Newcastle Banking Company *v.* Hymers 1203
Newcome *v.* Beloe, 381
Newell *v.* National Prov. Bank of England, 1781, 1846
— *v.* Weeks, 275, 277, 279
Newill *v.* Newill, 947, 977, 1327, 1409
Newland *v.* Att.-Gen., 1010
— *v.* Champion, 1916, 1917
Newman, In the goods of, 80
— *v.* Barton, 1312, 1313
— *v.* Bateson, 1287
— *v.* Beaumond, 490
— *v.* Newman, 1045, 1109
— *v.* Nightingale, 977
— *v.* Piercey, 1018, 1019
Newmarch, *Re*, 1571, 1574
Newport *v.* Kynaston, 1156
New Sombréro Phosphate Co. *v.* Erlanger, 1600
Newton's Trusts, *Re*, 969
Newton, In the goods of, 444, 495
— *v.* Bennet, 1751, 1752
— *v.* Clarke, 80
— *v.* Marsden, 1141
— *v.* Metropolitan Railway Company, 252, 256
— *v.* Newton, 168
— *v.* Richards, 1869
— *v.* Sherry, 1207, 1822
— *v.* Walker, 783, 1873
Nicholls *v.* Binns, 311
— *v.* Judson, 1163, 1164, 1877
— *v.* Haviland, 984, 1075
— *v.* Nicholls, 95
— *v.* Osborn, 1124, 1293
Nichols *v.* Binns, 20, 22, 284
— *v.* Savage, 983
Nicholson, In the goods of, 324
— *Re*, 1776
— *v.* Tutin, 1760
— *v.* Wilson, 988, 996
Nickalls, In the goods of, 138
Nicol *v.* Askew, 491
Nield *v.* Smith, 1658
Nightingale *v.* Goulburn, 923
— *v.* Lawson, 1815
— *v.* Lee, 1858
Nisbett *v.* Murray, 1034, 1043
Noble *v.* Brett, 1313, 1314
— *v.* Cass, 732
— *v.* Phelps, 46, 47, 49, 52, 170, 179
— *v.* Stow, 1326
Noddings, In the goods of, 226, 234
Noel, In the goods of, 452, 461
— *v.* Lord Henley, 1514, 1566, 1583
— *v.* Noel, 1154
— *v.* Noel, 1582
— *v.* Robinson, 1312, 1313, 1532
— *v.* Rochefort, 1297
— *v.* Wells 465
Noell *v.* Nelson, 1862
Nokes *v.* Seppings, 1883

Norbury *v.* Norbury, 1705, 1709
— *v.* Richards, 1381
Norcott *v.* Gordon, 1217
Norden *v.* Levit, 1537, 1697
Norman *v.* Baldry, 1206
— *v.* Bourne, 382
— *v.* Fraser, 1327
— *v.* Kynaston, 154
Norman's Trust, *Re*, 953, 983
Norrington, *Re*, 1719
Norris *v.* Elsworth, 725
— *v.* Harrison, 1023, 1302
— *v.* Norris, 1190, 1191, 1284
North *v.* Baker, 1612
— Lord *v.* Purdon, 1345, 1348
Northen's Estate, *Re*, 939
Northey *v.* Cock, 430
— *v.* Northey, 675, 676, 677
Northumberland's, Earl of, case, 636
Norton, *Ex parte*, 1283
— *v.* Bassett, 81
— *v.* Frecker, 1699
— *v.* Glover, 788
— *v.* Molyneux, 411, 427
— *v.* Norton, 1374
— *v.* Relly, 40
— *v.* Turvill, 1893
Nothard *v.* Proctor, 1880
Nott *v.* Stephens, 696
Nottley *v.* Palmer, 1275
Nourse *v.* Finch, 1348
Nowell, *v.* Nowell, 1899
Nowlau *v.* Nelligan, 1127
Noyce, *Re*, 938, 1122
Noys *v.* Mordaunt, 603
Nugee *v.* Chapman, 1046
Nugent *v.* Giffard, 801, 803
Nunn's Trusts, *Re*, 1011
Nunn *v.* Barlow, 883, 886
— *v.* Harvey, 1272

O.

Oakes *v.* Oakes, 1188
Oakey *v.* Dalton, 699, 1799
Obee *v.* Bishop, 1922
Oble *v.* Dittlesfield, 1672
O'Brien *v.* Tyssen, 920
O'Byrne, In the goods of, 459
Occleston *v.* Fullalove, 954, 957, 959
Oceanic Steamship Co. *v.* Sutherberry, 808
O'Connor *v.* Haslam, 1492, 923
O'Dwyer *v.* Geare, 52, 182, 327
Oddie *v.* Brown, 1104
— *v.* Woodford, 976
O'Ferrall, *Ex parte*, 1175, 1283
Offley *v.* Best, 493, 494
— *v.* Offley, 838
Oglander *v.* Baston, 752
Ogle *v.* Knipe, 1056
— *v.* Morgan, 1009
Ogneb's Andrew, case, 46, 732, 798
Oke *v.* Heath, 1080, 1086, 1320
Okeden *v.* Clifden, 178
Oldfield *v.* Cobbett, 1805
— *v.* Preston, 1448, 1458
Oldham *v.* Carleton, 1348
— *v.* Pickering, 1539
Olding, In the goods of, 79
Oldman *v.* Slater, 1347
Oliphant, In the goods of, 190, 191, 269
Olivant *v.* Wright, 1126
Oliver, *Re*, 84
— *v.* Brickland, 1364
— *v.* Frewen, 1347
— *v.* Oliver, 1028, 1279
Olney *v.* Bates, 987, 1086, 1331
O'Loughlin, In the goods of, 1041
O'Mahoney *v.* Burdett, 1126
Ommaney *v.* Bevan, 1125
— *v.* Stilwell, 1078
— *v.* Butcher, 923, 924, 1052, 1318, 1347
Oneal *v.* Mead, 679, 1563
Onions *v.* Tyrer, 119, 126, 155
Onslow *v.* Cannon, 311
— *v.* South, 1093
Oppenheim *v.* Henry, 483, 942
Ord, *Re*, 175, 176, 177, 1060, 1302
— *v.* Fenwick, 762
Orford *v.* Churchill, 952, 959, 975
Oriental Bank, *Re*, *Ex parte* The Crown, 858
Orleans, Duchess of, In the goods of, 306, 388, 420
Orme *v.* Broughton, 713
Ormonde *v.* Kynnersley, 622
Ormston, *Re*, 1949
Orpen, *Re*, 1173
Orr *v.* Kaines, 841, 1312, 1315
— *v.* Newton, 230, 1717, 1737
Orr-Ewing, *Re*, 1528, 1529
Orrell *v.* Orrell, 1305
Orton *v.* Smith, 312
Orton's Trust, *Re*, 1079
Osborn *v.* Brown, 1145
— *v.* Morgan, 659, 738, 1279
Osborne to Rowlett, 830
— *v.* Crosbern, 1615
— *v.* Guy's Hospital, 1656
— *v.* Leeds, Duke of, 1158, 1159
— *v.* Rogers, 217, 218, 220, 221
Osmond *v.* Fitzroy, 34
— *v.* Tindall, 957
Oswald, In the goods of, 293, 315
Other *v.* Ivison, 1620, 1622
Otley Railway, *Re*, 176
Ottley *v.* Gilby, 1936
Oughton *v.* Seppings, 253

Ouseley *v.* Anstruther, 1034, 1049, 1068, 1582
Overend *v.* Gurney, 1162
Overend Gurney *v.* Gurney, 1600
Overhill's Trusts, *Re*, 955, 957
Overington *v.* Ward, 1881
Overton *v.* Sydhall, 1683
Ovey, *Re*, 924, 1019. 1035, 1576
Owen's Trusts, *Re*, 947, 977
Owen *v.* Bryant, 956, 957
— *v.* Delamere, 1682, 1900
— *v.* Owen, 816, 1080, 1336, 1338, 1543
— *v.* Williams, 287
Owston, In the goods of, 13
Owthwaite, *Re*, 1710
Oxenden *v.* Lord Compton, 590
Oxenham *v.* Clap, 218, 219, 223, 878, 881

P.

Pack *v.* Bathurst, 1550
Packer *v.* Packer, 1280
Packham *v.* Gregory, 1087, 1096, 1099 1106, 1107, 1108, 1109
Packington *v.* Culliford, 1603
Packman's case, 425, 503, 1837
Padbury *v.* Clark, 1305
Paddon *v.* Richardson, 1703
Paddy, *Ex parte*, 256
Padget *v.* Priest, 209, 216, 218, 221
Padwick *v.* Scott, 1833
Page *v.* Donovan, 67
— *v.* Leapingwell, 1033, 1058, 1214, 1216
— *v.* May, 1137
— *v.* Page, 1326, 1336, 1337, 1338
— *v.* Soper, 998
— *v.* Young, 1024, 1025, 1026, 1058
Paget *v.* Grenfell, 1168
— *v.* Huish, 1022
— *v.* Read, 1743
Paice *v.* Archbishop of Canterbury, 839
Pain *v.* Benson, 1082
Paine *v.* Hyde, 1132
— *v.* Wagner, 946, 947
Painter *v.* Salisbury, 1327
Palgrave *v.* Wyndham, 699
Palin *v.* Hills, 1000, 1003, 1005, 1006, 1007
Palmer's Trusts, *Re*, 937
Palmer *v.* Cohen, 778
— *v.* Craufurd, 1061
— *v.* Dent, 274
— *v.* Gerrard, 1367
— *v.* Jones, 1941
— *v.* Litherham, 506
— *v.* Litherland, 425, 426
— *v.* Mitchell, 1744
— *v.* Newell, 1333
Palmer *v.* Reiffenstein, 784
— *v.* Trevor, 1276
— *v.* Wakefield, 1742
— *v.* Waller, 1865
— *v.* Whitmore, 550
Pankhurst *v.* Howell, 1200
Pannel *v.* Fen, 819, 1759
Pannell *v.* Hurley, 806
— *v.* Taylor, 1930, 1931, 1932
Papillon *v.* Papillon, 1167
Paradice *v.* Sheppard, 1804
Paramour *v.* Yardley, 1228, 1234, 1237
Pardo *v.* Bingham, 1842
Pardoe *v.* Price, 1830
Parfitt *v.* Lawless, 40, 44, 100
Parker's Will, *Re*, 1821
Parker, In the goods of, 106, 463, 1086
— *Re*, 911, 964, 965, 1100, 1495, 1881, 1953
— *v.* Atfield, 1852
— *v.* Baylis, 1542
— *v.* Biscoe, 165
— *v.* Brooke, 661
— *v.* Clarke, 973
— *v.* Constable, 600
— *v.* Dee, 882, 1862
— *v.* Felgate, 289
— *v.* Golding, 1099
— *v.* Harvey, 1592
— *v.* Hickmoott, 319
— *v.* Hodgson, 1119
— *v.* Kett, 223, 502
— *v.* Lechmere, 670
— *v.* Marchant, 931, 1009, 1040, 1045, 1046, 1048, 1052, 1053, 1299
— *v.* Morley, 1208
— *v.* Nickson, 148
— *v.* Ringham, 883
— *v.* Tootal, 942
Parkin *v.* Bainbridge, 99
— *v.* Knight, 971, 978, 1106
Parkinson's Trusts, *Re*, 989, 990, 991
Parkinson *v.* Thornton, 260
Parnall *v.* Parnall, 98
Parnell *v.* Lyon, 1143, 1145
Parnham's Trusts, *Re*, 1131
Parr, In the goods of, 125
Parrott, *Re*. 961
— *v.* Worsfold, 1021, 1024, 1028
Parry *v.* Ashley, 1544
— *v.* Harbert, 809
— *v.* Warrington, 1247
Parry and Daggs, *Re*, 1126, 1131
Parsons *v.* Coke, 979
— *v.* Freeman, 1570
— *v.* Gulliford, 1076
— *v.* Hancocke, 1861
— *v.* Lanoe, 157
— *v.* Mayesden, 215, 345

Parsons *v.* Parsons, 719, 969
Partington, *Re*, 1809
Partington *v.* Att.-Gen., 851, 540
Partridge's case, 327
Partridge *v.* Baylis, 1106, 1138
— *v.* Court, 764, 765, 1537
— *v.* Partridge, 1187, 1188
— *v.* Pawlet, 1340
Paske *v.* Ollat, 99, 100
Pass *v.* Dundas, 1735
Passmore *v.* Passmore, 97
Patch *v.* Graves, 154
Patching *v.* Barnett, 1947
Paterson *v.* Rolland, 1328
— *v.* Scott, 1589
Patience, *Re*, 1394
Paton *v.* Sheppard, 1049
Patten *v.* Panton, 256
— *v.* Patten, 554
— *v.* Poulton, 134
Pattison *v.* Pattison, 1187, 1385
Patton *v.* Randall, 576
Paul *v.* Children, 957
— *v.* Compton, 944
— *v.* Nettleford, 843
— *v.* Wilkins, 581
Paule *v.* Moodie, 233
Paull *v.* Simpson, 214, 1636
Pawlett *v.* Pawlett, 1118
Pawson *v.* Pawson, 1059
Paxton, In the goods of, 455, 458
— *v.* Douglas, 883, 1911
Payne *v.* Little, 1814, 1896
— *v.* Low, 1275
— *v.* Mortimer, 871
— *v.* Trappes, 133, 169
— *v.* Webb, 1385
Peacock *v.* Collins, 1940
— *v.* Lowe, 346, 479
— *v.* Monk, 673
— *v.* Stockford, 936
Peacocke *v.* Pares, 951
Peake *v.* Ledger, 1803
Pearce, *Re*, 1495
— *v.* Carrington, 942
— *v.* Edmeades, 1329, 1386
— *v.* Vincent, 988
Peareth *v.* Marriot, 1508
Pearks *v.* Moseley, 1116
Pearman *v.* Pearman, 1098, 1099, 1109
Pearn, In the goods of, 69, 78
Pears *v.* Wilson, 1831
Pearse, In the goods of, 86
— *v.* Pearse, 545
Pearson *v.* Archdeaken, 1203
— *v.* Bank of England, 721
— *v.* Casamajor, 1330
— *v.* Dolman, 1104
— *v.* Helliwell, 1212
— *v.* Henry, 1666, 1675, 1676
Pearson *v.* Pearson, 76, 78, 1239, 1240, 1286, 1288
— *v.* Rutter, 937
— *v.* Stephen, 972
Pease *v.* Mead, 697
— *v.* Naylor, 1852
— *v.* Pattinson, 921
Peat *v.* Chapman, 1080, 1326
— *v.* Crane, 1709, 1724
Pechell *v.* Hilderley, 308
— *v.* Jenkinson, 64, 114
Peck, In the goods of, 385, 418
— *v.* Parrott, 772
Peckham's case, 506
Peek's Trusts, *Re*, 1099
Peek *v.* Gurney, 1600
Peel *v.* Catlow, 975
Pegg *v* Chamberlain, 446
Pelham *v.* Anderson, 917
— *v.* Newton, 329
Pell's Trusts, *Re*, 1079
Pemberton *v.* Cony, 189
— *v.* Pemberton, 133
— *v.* Topham, 1916
Pembrooke *v.* Friend, 1572
Penley *v.* Penley, 978
Pennant *v.* Kingscote, 79, 93
Pennington, In the goods of, 114
— *v.* Buckley, 351, 756
— *v.* Healey, 1697
Penny, In the goods of, 442
— *v.* Brice, 1787
— *v.* Clarke, 1328
— *v.* Penny, 851
— *v.* Turner, 979
— *v.* Watts, 1827, 1912, 1913, 1915
Penry *v.* Brown, 641
Penton *v.* Robart, 624, 644, 653, 654
Pepper *v.* Bloomfield, 1222
Peppercorn *v.* Wayman, 822
Peppin *v.* Bickford, 960
Peppitt's Estate, *Re*, 1880
Percival *v.* Cooke, 1612
— *v.* The Queen, 513
Percy, *Re*, 1131
Perfect *v.* Lord Curzon, 1114
Perkins *v.* Baynton, 1296, 1326, 1566, 1567, 1752, 1753
— *v.* Cooke, 1212
— *v.* Micklethwaite, 173, 1082
Perkinson *v.* Gilford, 1601, 1603
Perrin *v.* Lyon, 1140
Perrot *v.* Austin, 1599
— *v.* Perrot, 127, 130
Perry, In the goods of, 227, 233
— Executors of, *v.* The Queen, 548, 1086
— *v.* Dorset, 1933
— *v.* Jenkins, 1785
— *v.* Meddowcroft, 1303

Perry *v.* Merritt, 1131
— *v.* Phelips, 883
— *v.* Whitehead, 1200
— *v.* Woods, 773
Perryman *v.* Westwood, 1871
Petchell, In the goods of, 138, 139, 144
Peterborough, Bishop of, *v.* Mortlock, 1220
Peters *v.* Dipple, 1105
Peters *v.* Tilley, 280
Peterson *v.* Peterson, 1315
Petit *v.* Smith, 1353
Petre, Lord, *v.* Heneage, 634
— *v.* Petre, 1033, 1214, 1273
Pett *v.* Pett, 1384
Petts, *Re*, 1015, 1016
Pettifer *v.* James, 355
Pettinger *v.* Ambler, 1323
Petty *v.* Wilson, 1053, 1063
Peytoe's case, 700, 702
Peyton, *Re*, 1460, 1467
— *v.* Bury, 1144
Phayre *v.* Peree, 1710
Pheasant *v.* Pheasant, 742
Phelps, In the goods of, 88
Phene's Trusts, *Re*, 264, 979, 1329
Philanthropic Society *v.* Hobson, 1893
Philipps *v.* Chamberlaine, 938, 1058
Philips *v.* Echard, 872
— *v.* Philips, 1074
— *v.* Thornton, 95
Phillipo *v.* Munnings, 1927
Phillips, In the goods of, 441, 443
— *Ex parte*, 590, 1898
— *Re*, 1322
— *v.* Barker, 1013
— *v.* Beal, 1253, 1700
— *v.* Bignell, 841, 842, 846
— *v.* Cayley, 1322
— *v.* Everard, 810, 1643
— *v.* Garth, 930, 984
— *v.* Gutteridge, 1212
— *v.* Hartley, 342
— *v.* Homfray, 1593, 1602, 1604, 1605, 1799, 1879
— *v.* Jones, 1880
— *v.* Parry, 1591
— *v.* Phillips, 584, 1179, 1195, 1196, 1197, 1493, 1701, 1724, 1800
Phillipson *v.* Gatty, 1705, 1724
— *v.* Harvey, 842
Philliskirk *v.* Pluckwell, 789
Philpot *v.* Briant, 1667, 1874
Philpott *v.* St. George's Hospital, 914
Philps' Will, *Re*, 969, 979, 1077
Phiney *v.* Phiney, 1373
Phipps, In the goods of, 104
— *v.* Ackers, 1095, 1106, 1112
— *v.* Annesley, 1256, 1582
Phipps *v.* Earl of Anglesea, 145, 751, 1297
— *v.* Hale, 68, 86
— *v.* Steward, 257, 1877
— *v.* Williams, 1112
Picard *v.* Hine, 1906
Picken *v.* Matthews, 943
Pickering *v.* Pickering, 405, 461, 1037, 1038, 1039, 1252
— *v.* Stamford, 902, 1361, 1362, 1770
— *v.* Towers, 192
Pickersgill *v.* Rodger, 1086, 1306
Pickford *v.* Hunter, 1909
Pickup *v.* Atkinson, 1035, 1040
Pickwick *v.* Gibbes, 1289
Pidgeon *v.* Pitts, 1181
Pierce *v.* Thornely, 744
Piercy, In the goods of, 81
Pierson *v.* Garnet, 1296
Piety *v.* Stace, 1749, 1754
Pigg *v.* Clarke, 989
Piggott *v.* Green, 1148
— *v.* Jefferson, 1924
Piggott's case, *Re*, 434
Pigot and Gascoigne's case, 185, 416
Pigott *v.* Bagley, 1311
— *v.* Waller, 164
— *v.* Wilder, 6
Pike *v.* Badmering, 92
— *v.* Fitzgibbon, 1550
Pile, In the goods of, 1328
Pimm *v.* Insall, 1560
Pinbury *v.* Elkin, 771
Pinchard *v.* Fellows, 1936
Pinchon's case, 558, 698, 869, 1666
Pine, In the goods of, 385, 400
Pinder *v.* Pinder, 987, 988
Pinede's Settlement, *Re*, 1322
Pinney *v.* Hunt, 241, 487
— *v.* Pinney, 254, 1792
Piper *v.* Piper, 1572, 1573
Pipon *v.* Wallis, 406
Pistor *v.* Dunbar, 1720
Pitcher *v.* Tovey, 1633
Pitt *v.* Bridgewater, 1672
— *v.* Camelford, 1030
— *v.* Pidgeon, 1156
— *v.* Pitt, 610, 839, 1522
— *v.* Woodham, 844, 847
Plant *v.* Taylor, 1543
Platt *v.* Att.-Gen. of New South Wales, 1392
— *v.* Platt, 1195
— *v.* Routh, 550, 1412, 1421, 1482, 1550
Player *v.* Foxhall, 890
Playfair *v.* Cooper, 1927
Playne *v.* Scriven, 83
Plenty *v.* West, 139, 140, 143, 144, 1582

Plume *v.* Beale, 315, 467
— *v.* Plume, 1169
Plumer *v.* Marchant, 1599
Plunket *v.* Penson, 1546
— *v.* Sharpe, 846
Plunkett *v.* Lewis, 1908
Plymouth's, Lord, case, 589
Pockley *v.* Pockley, 1562
Pocock *v.* Att.-Gen., 924
— *v.* Reddington, 1754
Podmore *v.* Whatton, 135, 320
Pollard *v.* Doyle, 1762
— *v.* Gerard, 1952
Pollexfen *v.* Moore, 581
Pollock, *Re*, 1194, 1199, 1201
— *v.* Croft, 1144
Pomfret *v.* Perring, 1323
Ponton *v.* Dunn, 1041
Pole's Estate, *Re*, 660
Poole, *Re*, 1546
— *v.* Bott, Bott, 1122
— *v.* Terry, 1120
— *v.* Wishaw, 1381
Pooley, *Re*, 899, 1762, 1942
— *v.* Ray, 1357, 1770
Poor *v.* Myal, 913, 1129
Pope *v.* Pope, 975
— *v.* Whitcombe, 981
Popham *v.* Lady Aylesbury, 1041
Poplar School, *Re*, 1819
Portal & Lamb, *Re*, 176, 177, 1302
Portarlington *v.* Damer, 1908
— (Lord) *v.* Soulby, 1801
Porter's Trusts, *Re*, 969, 970, 1075, 1078
Porter, In the goods of, 158
— *v.* Baddeley, 1245, 1252
— *v.* Fox, 1117
— *v.* Smith, 173, 1192
— *v.* Tournay, 1044, 1049, 1051, 1253
Portland *v.* Prodgers, 59
Portlock *v.* Gardner, 1748, 1753, 1922, 1924
Portmore *v.* Bunn, 720
Postletwaite *v.* Mounsey, 1895
Potinger *v.* Wightman, 1398
Potter *v.* Baker, 1059
— *v.* Chapman, 595
— *v.* Commissioners of Inland Revenue, 1521
— *v.* Potter, 164
Potter's Trust, *Re*, 1076, 1077, 1078
Potts, *Re*, 1139
— *v.* Leighton, 1759
— *v.* Potts, 639
— *v.* Smith, 1221
Potts *v.* Ward, 782
Poulet *v.* Poulet, 1118
Pountney, In the goods of, 351, 413
Powel *v.* Cleaver, 1200
Powell's Trusts, *Re*, 1052, 1321
Powell, In the goods of, 67
— *v.* Aiken, 1606
— *v.* Att.-Gen., 917
— *v.* Evans, 1692, 1703, 1717, 1724
— *v.* Graham, 1599, 1662, 1663, 1664, 1666, 1673
— *v.* Hellicar, 684
— *v.* Layton, 1603
— *v.* Morgan, 604, 1139
— *v.* Powell, 130, 131
— *v.* Rawle, 1133
— *v.* Rees, 1606, 1608
— *v.* Stratford, 190, 194
Power *v.* Hayne, 1062
Powers, *Re*, 1904, 1905
Powis In the goods of, 459
— *v.* Andrews, 471
Powys, *v.* Blagrave, 1605
— *v.* Mansfield, 1195, 1197, 1199, 1200, 1201
Prater, *Re*, 1042, 1043
Pratt *v.* Harvey, 913
— *v.* Jackson, 1044
— *v.* Mathew, 953, 957, 983
— *v.* Pratt, 1371, 1372
— *v.* Sladden, 1345
— *v.* Stocke, 491
— *v.* Swaine, 553, 1785
Prendergast *v.* Lushington, 1040
— *v.* Prendergast, 1039
Presant *v.* Goodwin, 1154
Prescott *v.* Boucher, 800
— *v.* Long, 944
President of United States *v.* Drummond, 1392
Prestney *v.* Mayor of Colchester, 1887
Preston *v.* Lord Melville, 368, 1389
Price, In the goods of, 323
— *Re*, 58, 179, 1178, 1179, 1936
— *v.* Dewhurst, 297, 307, 468
— *v.* Lockley, 978
— *v.* Morgan, 1601
— *v.* Moulton, 765
— *v.* Page, 1013, 1015
— *v.* Parker, 49, 50, 58, 179, 503
— *v.* Powell, 117
— *v.* Price, 1560
— *v.* Strange, 992, 1000, 1366
Prichard *v.* Prichard, 1053, 1054
Pride *v.* Fooks, 936, 975, 1717
Pridie *v.* Field, 1511
Priestley *v.* Holgate, 1132
Priestman *v.* Thomas, 241, 470, 487
Primrose *v.* Bromley, 1621
Prince's case, 185, 422, 423
Prince *v.* Hine, 1264
Pring, *Ex parte*, 585
Pringle, *Re*, 1053, 1317
— *v.* Pringle, 746

Prinsep *v.* Dyce Sombre, 30, 32, 33, 312
Prior *v.* Henbrow, 1624
— *v.* Horniblow, 1924
Prison Charities, *Re*, 924
Pritchard's Trust, *Re*, 1330
Pritchard *v.* Arbouin, 913, 919
Probert *v.* Morgan, 678
Proctor (The King's) *v.* Daines, 95, 96, 97
Prole *v.* Soady, 744
Prosser *v.* Wagner, 466
Prothero, In the goods of, 444
Proud *v.* Proud, 1927
— *v.* Turner, 1370, 1371
Proudfoot *v.* Hume, 1883
Proudley *v.* Fielder, 755
Prowse *v.* Abingdon, 1119, 1121
— *v.* Spurgin, 1315
Pruen *v.* Osborne, 974, 975
Prytherch, *Re*, 949
Puddephatt, In the goods of, 69
Pugh *v.* Arton, 658
— *v.* Heath, 1176
Pullen *v.* Ready, 331
— *v.* Serjeant, 205
Pullen *v.* Smith, 1258
Pulling *v.* Great Eastern Railway Company, 699, 700
Pulman, In the goods of, 201
Pulsford *v.* Hunter, 944, 1101, 1102
Pulteney *v.* Darlington, Lord, 583
— *v.* Warren, 1604, 1607
Punchard, In the goods of, 192
Purchase *v.* Shallis, 1067
Purdew *v.* Jackson, 743
Purdon *v.* Purdon, 1786
Purefoy *v.* Rogers, 184, 615, 771
Purse *v.* Snaplin, 1212
Pusey *v.* Desbouverie, 1374, 1375
— *v.* Pusey, 636
Pybus *v.* Smith, 1891
Pye, *Ex parte*, 1194, 1195, 1200
Pym *v.* Great Northern Railway Company, 704
— *v.* Lockyer, 1194
Pynchyn *v.* Harris, 594
Pyne *v.* Dor, 621
— *v.* Franklin, 946
— *v.* Woolland, 220, 1835
Pyot *v.* Pyot, 982
Pytt *v.* Fendall, 229

Q.

QUARLES *v.* Capell, 1561
Queade's Trusts, *Re*, 663
Queen, The, and Archbishop of Canterbury's case, 592
Queensberry *v.* Shebbeare, 1800
Queen's College *v.* Sutton, 1011, 1028
— Proctor *v.* Williams, 430
Quennell *v.* Turner, 1067, 1582
Quick *v.* Ludborrow, 1596
— *v.* Quick, 295, 418
— *v.* Staines, 561, 562
Quicke *v.* Leach, 1134
Quinn *v.* Butler, 131

R.

RADCLIFFE, *Re*, 883, 1850, 1937
— *v.* Buckley, 952
— *v.* D'Oyly, 1609, 1610
Radford *v.* Willis, 953, 961
Radnall, In the goods of, 383
Raffenel, In the goods of, 1395
Raikes *v.* Boneton, 1589
Raine, In the goods of, 8, 273, 316
Rains *v.* Commissary of Canterbury, 491
Rainsford *v.* Taynton, 438, 439
Ralph *v.* Carrick, 974, 975, 976
Ramsay *v.* Shelmerdine, 1081
— *v.* Thorngate, 719
Ramsay's Settlement, *Re*, 1448
Ramsbottom's case, 1793
Ramsbottom *v.* Buckhurst, 1794
Ramsden *v.* Jackson, 1847
Rancliffe *v.* Parkins, 1305
Randal *v.* Randal, 767
Randall *v.* Bookey, 1346
— *v.* Morgan, 666
— *v.* Payne, 1140
— *v.* Rigby, 1599
— *v.* Russell, 1051, 1253, 1518
Randfield *v.* Randfield, 155, 900, 1126
Rankin *v.* Weguelin, 686
Ranking's Settlement, *Re*, 1327
Ranking *v.* Barnard, 1175, 1281
Rann *v.* Hughes, 1666, 1667, 1673, 1833
Raphael *v.* Boehm, 1296, 1692, 1757
Ratcliff *v.* Davies, 769
Ratcliffe's case, 359
Ratcliffe *v.* Barnes, 279, 315
— *v.* Winch, 1708, 1911
Raven *v.* Waite, 1288, 1291
Ravenscroft *v.* Frizby, 1927
— *v.* Jones, 1197
— *v.* Ravenscroft, 492
Rawlings *v.* Jennings, 1045, 1058
— *v.* Lambert, 1881
Rawlins *v.* Powel, 1163
— *v.* Rawlins, 942, 1291
Rawlinson *v.* Burnell, 380
— *v.* Rawlinson, 1191
— *v.* Shaw, 235, 827, 1182
— *v.* Stone, 812
Raworth *v.* Marriott, 99
Rawson *v.* Samuel, 1783
Rawstone *v.* Parr, 1622

Ray *v.* Adams, 981
— *v.* Ray, 561, 562
Raymond *v.* Brodbelt, 1023, 1294
— *v.* De Watteville, 298, 847
— *v.* Fitch, 709, 715, 716, 717
Rayner *v.* Green, 229
— *v.* Koehler, 216, 1912, 1914, 1915
— *v.* Mowbray, 980
Rayson *v.* Parton, 814
Read's case, 208, 209, 212, 1534, 1535
Read, In the goods of, 305, 306
— *v.* Backhouse, 929
— *v.* Blunt, 872
— *v.* Brookman, 1703
— *v.* Great Eastern Railway Co., 705
— *v.* Snell, 679
— *v.* Stedman, 1344, 1345
— *v.* Strangeways, 1068
— *v.* Truelove, 228, 1736
— *v.* Willis, 946
Reddell *v.* Dobree, 684
Redding, In the goods of, 66
Redfern, *Re*, 935
Reece *v.* Steele, 931
— *v.* Strafford, 349
Reech *v.* Kennegal, 1667, 1670, 1673
Reed, In the goods of, 377, 459
— *v.* Braithwaite, 937
— *v.* Devaynes, 1147, 1150
— *v.* Harris, 1885
Rees, In the goods of, 91
— *Re*, 987
— *v.* Keith, 747
— *v.* Perrot, 600
— *v.* Rees, 73
— *v.* Watts, 1781, 1846
Reeve's Trusts, *Re*, 1149
Reeve *v.* Att.-Gen., 924
— *v.* Denny, 489
Reeves *v.* Brymer, 1278
— *v.* Freeling, 281, 842, 847
— *v.* Ward, 838, 1853, 1857
Reffell *v.* Reffell, 291
Regan, In the goods of, 74
Reg. *v.* Commissioners of Stamps, 1439
— *v.* Price, 885, 1678
Rehden *v.* Wesley, 1721
Reid, In the goods of, 310, 497
— *v.* Lord Tenterden, 1639, 1641
— *v.* Reid, 57, 660, 662, 1175, 1277, 1278
— *v.* Territt, 1908
Reitz, In the goods of, 376
Remington *v.* Savage, 615
Remnant *v.* Bremridge, 1638
— *v.* Hood, 1120
Rendall *v.* Andreae, 1635
Rennell *v.* Bishop of Lincoln, 593, 594, 1538
Rennie *v.* Massie, 313
Renvoise *v.* Cooper, 1057
Repington *v.* Tamworth School, 594
Revel *v.* Watkinson, 1271
Rex *v.* Barnard Castle, 565
— *v.* Barnes, 1792
— *v.* Bettesworth, 48, 400, 403, 417, 418
— *v.* Buttery, 477
— *v.* Chaplin, 1650
— *v.* Collectors of Customs, 571, 177
— *v.* Crosse, 643
— *v.* Gibson, 477
— *v.* Great Glenn, 343, 565
— *v.* Haines, 1793
— *v.* Hay, Dr., 1073
— *v.* Hebden, 1875
— *v.* Holland, 613
— *v.* Horsley, 554, 556, 566
— *v.* Londonthorpe, 641
— *v.* Mann, 555
— *v.* Otley, 641
— *v.* Peck, 723, 1649, 1650
— *v.* Pett, 1650
— *v.* Portington, Lady, 901, 904
— *v.* Raines, 187, 232, 1356
— *v.* Simpson, 187
— *v.* St. Dunstan, 649
— *v.* Stone, 250, 251, 565
— *v.* Sundrish, 565
— *v.* Uttoxeter, 565
— *v.* Vincent, 477
— *v.* Wade, 850, 1851
— *v.* Widworthy, 566
Rex *v.* Wright, 35
Reynel's, Sir George, Case, 1538
Reynish *v.* Martin, 1119, 1142, 1143
Reynolds, In the goods of, 167, 168
— *v.* Goodlee, 585
— *v.* Kortright, 98, 1319
— *v.* Prosser, 1672
— *v.* Wright, 602, 1541
Rhoades, In the goods of, 371
— *Re*, 1324
Rhodes, *Re*, 264, 1886
— *v.* Barret, 1909
— *v.* Haigh, 782
— *v.* Muswell Hill Company, 1138
— *v.* Rhodes, 294, 316, 929, 932
— *v.* Rudge, 1576, 1579, 1580
— *v.* Smethurst, 1842, 1843
Rice *v.* Gordon, 804, 1692
— *v.* Oatfield, 92
Rich *v.* Chamberlayne, 418
— *v.* Cockell, 51, 54, 477, 661, 1308
— *v.* Frank, 1634
Richards, In the goods of, 323
— *Re*, 1287
— *v.* Att.-Gen. of Jamaica, 582
— *v.* Brown, 1206, 1238, 1858
— *v.* Chave, 432

Richards *v.* Delbridge, 670
— *v.* Foster, 1492
— *v.* Humphreys, 312
— *v.* Perkins, 1881
— *v.* Moloney, 1181
— *v.* Queen's Proctor, 138, 140
— *v.* Richards, 738, 1020, 1022, 1903
Richardson, In the goods of, 386, 407
— *Ex parte*, 1682, 1688
— *Re*, 1907, 1945
— *v.* Bank of England, 1883
— *v.* Barry, 150
— *v.* Elphinstone, 1164
— *v.* Gifford, 1230
— *v.* Greese, 1163, 1164, 1166
— *v.* Horton, 1559, 1615, 1621, 1622
— *v.* Jenkins, 1559
— *v.* Power, 1122
— *v.* Richardson, 670, 1328, 1385
— *v.* Seise, 403
— *v.* Smallwood, 1545
— *v.* Spraag, 936, 978
— *v.* Younge, 1839
Richmond *v.* Nicholson, 1608
— *v.* White, 887
Rickabe *v.* Garwood, 1385, 1386
Rickard *v.* Barrett, 1589
— *v.* Robson, 921
Rickards *v.* Mumford, 126, 133, 134
Ricket, *Re*, 1010
Rickets *v.* Ladley, 1583
Rickett *v.* Guillemard, 1082
Ricketts, *v.* Lewis, 803, 806
Ricketts *v.* Turquand, 1069
— *v.* Weaver, 716
Rickit's Trust, *Re*, 1010
Rico *v.* Gualtier, 1932
Riddell *v.* Sutton, 1676
Rider *v.* Kidder, 669
— *v.* Wager, 1171, 1184, 1226, 1563
Ridges *v.* Morrison, 1155, 1159
Ridgeway *v.* Munkittrick, 932, 975
Ridgway *v.* Clare, 1618
— *v.* Darwin, 33
— *v.* Newstead, 1314
— *v.* Woodhouse, 1129
Ridout *v.* Bristow, 1668, 1671
— *v.* Plymouth, 678, 680, 1592
Rigby, *Ex parte*, 816
— *v.* Strangways, 1908
Rigden *v.* Vallier, 690
Right *v.* Compton, 933
— *v.* Price, 81
Riky *v.* Kemmis, 1736
Ring *v.* Hardwick, 1129
— *v.* Jarman, 1447
Ringrose *v.* Bramham, 941, 942
Riordan *v.* Banon, 1351
Ripley, In the goods of, 295
— *v.* Moysey, 1946
— *v.* Waterworth, 1002, 1539, 1541, 1542
Rippen *v.* Priest, 1057
Rippin, In the goods of, 124
Risdon, In the goods of, 378
Rishton *v.* Cobb, 1016, 1130, 1141, 1143
Ritchie *v.* Rees, 841, 844, 845
Rivers, Lord, In the goods of, 445
Roach *v.* Hammond, 979
Robarts, In the goods of, 322
Roberts, In the goods of, 385
— *Re*, 983
— *v.* Burder, 1106
— *v.* Collett, 1277
— *v.* Cooke, 1319
— *v.* Cooper, 1283
— *v.* Higman, 941
— *v.* Kuffin, 1048, 1064
— *v.* Phillips, 85
— *v.* Pocock, 1023, 1031, 1224
— *v.* Roberts, 157, 159, 1575, 1583, 1893
— *v.* Round, 133
— *v.* Walker, 1583, 1584
— *v.* Wynn, 38
Robertson, *Re*, 1820
— *v.* Broadbent, 1019, 1034, 1035
— *v.* Fraser, 1328
— *v.* Powell, 154
— *v.* Richardson, 1131
— *v.* Smith, 94, 95, 291
Robin's case, 208, 427
Robins *v.* Dolphin, 311, 1398
Robinson's Trust, *Re*, 1818
Robinson, In the goods of, 96, 97, 158
— *Re*, 1807
— *v.* Addison, 720, 1026
— *v.* Bransby, 1171
— *v.* Clarke, 138
— *v.* Corbett, 1851
— *v.* Cumming, 1756
— *v.* Davison, 1597
— *v.* Elliott, 1948
— *v.* Francis, 872
— *v.* Gee, 871, 1699
— *v.* Geldard, 1021, 1224, 1590
— *v.* Governors of the London Hospital, 584, 1583
— *v.* Hunt, 946, 1059
— *v.* Lowater, 575
— *v.* Ommanney, 109
— *v.* Pett, 1759, 1942
— *v.* Quiddington, 1521
— *v.* Robinson, 931, 1709, 1717, 1719, 1753
— *v.* Shepherd, 1385, 1386

Robinson *v.* Smith, 995
— *v.* Sykes, 974
— *v.* Taylor, 1345
— *v.* Tickell, 991, 1261, 1263
— *v.* Tonge, 1586
— *v.* Waddelow, 990, 991
— *v.* Ward, 1721
— *v.* Webb, 1034, 1041
— *v.* Wheelwright, 1132
Robison *v.* Killey, 1264
Robley *v.* Robley, 1157
Robson, *Re*, 910, 911, 912, 916
— *v.* — , 1675
— *v.* Francis, 871
— *v.* Robson, 314
Roch *v.* Callen, 1158, 1926, 1927
Rock *v.* Hardman, 1259
— *v.* Leighton, 852, 879, 1847, 1848, 1864, 1867
Rocke *v.* Hart, 1750, 1751, 1752, 1753
— *v.* Rocke, 1255
Rodd *v.* Lewis, 16
Roddam *v.* Morley, 1839
Roddy *v.* Fitzgerald, 931, 971
Rodhouse *v.* Mold, 1565, 1571
Rodney *v.* Rodney, 1560
Rodwell *v.* Phillips, 620
Roe *v.* Harrison, 810
— *v.* Pattison, 929
— *v.* Summerset, 551
Roffey *v.* Greenwell, 1660
Rogers *v.* Acaster, 744
— *v.* Clarke, 1027
— *v.* Danvers, 868
— *v.* Frank, 1691, 1736
— *v.* Goodenough, 153, 155, 168, 181
— *v.* James, 256, 539
— *v.* Jones, 1311
— *v.* Mutch, 941
— *v.* Pittis, 156, 165, 167, 170
— *v.* Price, 1679, 1681
— *v.* Soutten, 1200, 1291, 1893
— *v.* Stanton, 783
— *v.* Thomas, 1010, 1054, 1317
Rogerson, In the goods of, 306, 354, 366, 387
Rolfe *v.* Perry, 1573
Rolleston *v.* Dixon, 1787
Rolls *v.* Pearce, 689, 690
Rook *v.* Warth, 732
— *v.* Att.-Gen., 984, 1385
Roome *v.* Roome, 1200
Roose, *Re*, 628, 1051
Roper's Estate, *Re*, 1334
Roper, *Re*, 1550, 1947
— *v.* Holland, 1830
— *v.* Roper, 1218, 1222
Rose, In the goods of, 115
— *v.* Bartlett, 202
— *v.* Bowler, 1663, 1664
Rose *v.* Gould, 1171
— *v.* Poulton, 787
— *v.* Rose, 1319
— *v.* Savory 1830
Rosher, *Re*, 1130
Roskelly *v.* Godolphin, 423, 889, 890
Ross's Trusts, *Re*, 1368
Ross, *Ex parte*, 857
— In the goods of, 462
— *Re*, 1820
— *v.* Adcock, 1610
— *v.* Borer, 1059
— *v.* Ewer, 50, 93
— *v.* Ross, 975, 1131
Rosser, In the goods of, 232
Rossiter, *Re*, 1572
Rotheram *v.* Rotheram, 1565
Rotherham *v.* Fanshaw, 1262
Rothwell *v.* Rothwell, 1883
Round *v.* Bell, 1927
Roundel *v.* Currer, 1127
Rous *v.* Noble, 403
Rouse's Estate, *Re*, 1291
Rouse *v.* Jones, 1911
Row *v.* Row, 851, 1592
Rowe *v.* Jackson, 1281
— *v.* Rowe, 1039, 1165, 1252
Rowland *v.* Cuthbertson, 1309
— *v.* Gorsuch, 1386
— *v.* Morgan, 638
— *v.* Tawney, 1122
— *v.* Witherden, 1720, 1723
Rowley *v.* Adams, 588, 1631, 1632, 1694, 1717
— *v.* Eyton, 164
Rownson, *Re*, 895, 1699
Rowsell *v.* Morris, 1912, 1914
Rowth *v.* Howell, 1721
Roxburgh *v.* Lambert, 380
Roy *v.* Gibbon, 1883, 1884, 1885
Royle, *Re*, 1904, 1908
— *v.* Hamilton, 952
Royston *v.* Cordrye, 1634
Rubery *v.* Stevens, 1638
Ruck *v.* Barwise, 1329
Ruddy, In the goods of, 435, 437
Rudge *v.* Barker, 1082
Rudge *v.* Winnall, 628, 1051, 1291
Ruding's Settlement, *Re*, 1323
Rudstone *v.* Anderson, 1032, 1192
Rule, In the goods of, 298
Rump *v.* Greenhill, 1908
Rush *v.* Peacock, 439
Russel *v.* Haddock, 1672
— *v.* Prat, 700
Russell's case, 698, 751
Russel, In the goods of, 160, 234, 324
— *Re*, 176
— *v.* Campbell, 966
— *v.* Clowes, 1342, 1344, 1345, 1347

Russel *v.* Dickson, 1157, 1158, 1291
— *v.* Kellett, 924
— *v.* Plaice, 803
— *v.* St. Aubyn, 1167
Rutherford *v* Maule, 370
Rutland *v.* Rutland, 698, 1380
Ruttinger *v.* Temple, 1607
Ryall *v.* Hannam, 1010
— *v.* Ryall, 1897
Ryan *v.* Cowley, 973, 975
— *v.* Ryan, 355
Ryde, In the goods of, 299
Ryder, In the goods of, 195, 898
— *v.* Bickerton, 1707
Ryland *v.* Smith, 747, 748
Rymes *v.* Clarkson, 98
Ryves *v.* Ryves, 1328, 1591
— *v.* The Duke of Wellington, 243

S.

SABERTON *v.* Skeels, 992
Sabin *v.* Heape, 576
Sacheverell *v.* Froggatt, 725
Sackvill *v.* Evans, 1636
Sackville *v.* Smyth, 1571
Sadler *v.* Hobbs, 1728, 1740
— *v.* Rickards, 1508
— *v.* Turner, 1023, 1346
Saffery *v.* Elgood, 596
St. Helens, Lord, *v.* Lady Exeter, 167
Sale *v.* Bishop of Lichfield, 1538
Salisbury *v.* Petty, 978, 1120, 1124, 1126
— *v.* Salisbury, 1364
Salmon *v.* Green, 1106
Saloway *v. v.* Strawbridge, 830
Salt *v.* Chattaway, 586, 1583
Salter *v.* Codbold, 1634
— *v.* Sladen, 842
Saltmarsh *v.* Barrett, 1344, 1345, 1347, 1751, 1810
Salusbury *v.* Denton, 916, 923, 981
Saltown, Lord, *v.* Lord Advocate, 1447
Salway *v.* Salway, 1721
Salwey *v.* Salwey, 741
Sammon, *Re*, 1427, 1505
Samson, In the goods, 186, 384
Samuel *v.* Morris, 218
— *v.* Samuel, 1131
Samwell *v.* Wake, 1579
Sand's, Sir George case, 847
Sandars *v.* Millar, 1269
Sandeman *v.* Mackenzie, 948, 951
Sander *v.* Heathfield, 889
Sanders' Trusts, *Re*, 1137
Sanders *v.* Ashford, 1082
— *v.* Blain, 821
— *v.* Franks, 1003
— *v.* Kiddell, 1510
Sanderson *v.* Bayley, 959, 965
Sanderson *v.* Stoddart, 851
Sanderson's Trusts, *Re*, 1058, 1101
Sandford *v.* Vaughan, 138, 292
Sandilands *v.* Innes, 1526
Sandrey *v.* Michell, 456
Sanger *v.* Sanger, 1652, 1654
Sankey *v.* Lilley, 290
Sartoris, In the goods of, 417
Satterthwaite *v.* Powell, 351, 1072
— *v.* Satterthwaite, 276
Saul *v.* Wilson, 489
Saunders' Trusts, *Re*, 952, 953
— case, 1233
Saunders, In the goods of, 105
— *v.* Drake, 1296
— *v.* Druce, 1917
— *v.* Saunders, 134
— *v.* Vautier, 1097, 1103, 1255
— *v.* Wakefield, 1674
Saunders-Davies, *Re*, 1564, 1589
Saurey *v.* Rumney, 1158
Savage, In the goods of, 132
— *v.* Blythe, 375, 413
— *v.* Carroll, 947
— *v.* Lane, 1895
Savile *v.* Blacket, 1032
Saville *v.* Morgan, 847
Sawbridge *v.* Hill, 362
Sawer *v.* Shute, 1283
Sawtell, In the goods of, 385
Sawyer *v.* Birchmore, 1208, 1919
— *v.* Mercer, 880
Saxton *v.* Saxton, 176, 177, 178, 1193, 1302
Say *v.* Creed, 988
Sayer *v.* Bradley, 976, 986
— *v.* Sayer, 1022, 1034, 1211, 1298
Sayre *v.* Hughes, 1200
Scales *v.* Collins, 1590
Scammel *v.* Wilkinson, 47, 58
Scarborough, In the goods of, 1318
Scard *v.* Jackson, 812
Scarf *v.* Jardine, 1623
Scarpellini *v.* Atcheson, 745
Scarsdale (Lord) *v.* Curzon, 638, 639
Scattergood *v.* Harrison, 1759, 1765
Scawen *v.* Blunt, 740
Schellinger *v.* Blackerby, 1538
Schenk *v.* Agnew, 1125
Schloss *v.* Stiebel, 1017
Schnell *v.* Tyrrell, 1138
Schofield *v.* Corbett, 1781
— *v.* Heap, 1196, 1197
Scholey *v.* Walton, 1796
Schroder *v.* Schroder, 1308
Schweder's Estate, *Re*, 1220, 1223
Schwerdfeger, In the goods of, 383
Score *v.* Ford, 1884, 1885
Scorell *v.* Boxall, 623
Scotney *v.* Lomer, 1099

Scott *v.* Becher, 187
— *v.* Beecher, 1566
— *v.* Bevan, 1297
— *v.* Briant, 1749
— *v.* Cumberland, 1948
— *v.* Harwood, 941
— *v.* Izon, 1683
— *v.* Jones, 1923
— *v.* Josselyn, 1131
— *v.* Moore, 988
— *v.* Salmond, 1214
— *v.* Scarborough (Lord), 944
— *v.* Scott, 131, 946, 1588
— *v.* Spashett, 1278, 1283
— *v.* Stevens, 1670
— *v.* Tyler, 802, 803, 804, 806, 1140
— *v.* Wheeler, 1883
Scotton *v.* Scotton, 1194
Scriven *v.* Tapley, 1281
Scruby *v.* Fordham, 21, 36, 136, 320
Scrutton *v.* Pattillo, 745
Sculthorpe *v.* Tipper, 1717
Scurfield *v.* Howes, 1105
Scurrah *v.* Scurrah, 844
Scurry *v.* Morse, 1878
Seager *v.* Bowle, 685
Seale *v.* Buller, 1208
Seale-Hayne *v.* Jodrell, 953
Seaman, In the goods of, 301
— *v.* Everard, 1702
— *v.* Wood, 1116, 1307
Searle *v.* Law, 1658
Searson *v.* Robinson, 553
Seaton *v.* Sturch, 311
Secar *v.* Atkinson, 1662
Seccombe *v.* Evans, 937
See, In the goods of, 385
Seers *v.* Hind, 810, 1750
Sefton *v.* Hopwood, 34, 40
Segrave *v.* Kirwan, 100, 468
Seifferth *v.* Badham, 988
Selby *v.* Bowie, 1701, 1725
— *v.* Selby, 1586
Seley *v.* Wood, 1345, 1347
Sellon *v.* Watts, 1592
Selsey (Lord) *v.* Lake (Lord), 1018
Selwood *v.* Mildmay, 1067
Selwyn, In the goods of, 351, 402, 1072
Semine *v.* Semine, 504
Senhouse *v.* Mawson, 1912
Sergeant, *Re*, 953
Serle *v.* Rradshaw, 1834
— *v.* St. Eloy, 1563
— *v.* Waterworth, 209, 213, 1668
Serocold *v.* Hemming, 164
Severs *v.* Severs, 1894
Sewell's Estate, *Re*, 1038, 1252
Seymour's Trust, 998
Seymour *v.* Nosworthy, 141
— *v.* Tresilian, 677
Shackleton *v.* Barrymore, 848
Shadbolt *v.* Waugh, 292
— *v.* Woodfall, 1205, 1231
Shadforth *v.* Temple, 581
Shafto *v.* Shafto, 1569
Shaftesbury *v.* Shaftesbury, 1034, 1188, 1190, 1191
— *v.* Marlborough, 1162, 1512
Shallcross *v.* Wright, 584, 1583, 1657, 1698
Shand *v.* Kidd, 936, 1386
Shard *v.* Shard, 1460
Sharland *v.* Mildon, 210, 220
Sharman, In the goods of, 93, 316, 317, 900, 1048, 1317
Sharp *v.* Lush, 851, 1679
Sharpe, *Re*, 1922
— *v.* Crispin, 1397
— *v.* Lord Scarborough, 1548, 1586
Shattock *v.* Shattock, 1546, 1550
Shaw, *Ex parte*, 1898
— In the goods of, 135, 136
— *v.* Cutteris, 61
— *v.* Ford, 1131
— *v.* Gould, 940, 953
— *v.* McMahon, 1060, 1061
— *v.* Marshal, 314
Shea *v.* Boschetti, 273, 483
Shearman, *Re*, 1905
Shearwood, *Re*, 1942
Shears *v.* Rogers, 1545
Sheddon *v.* Goodrich, 1307
Shee *v.* French, 1545, 1548
— *v.* Hale, 1131
Sheffield *v.* Lord Coventry, 1195, 1298
— *v.* Lord Orrery, 933
Sheffield and South Yorkshire Permanent Benefit Building Society *v.* Harrison, 642
Sheldon, *Re*, 1252
— *v.* Sheldon, 87
Shelley *v.* Bryer, 962
— *v.* Shelley, 638
Shelly's case, 836, 1854
Shephard, *Re*, 1616, 1797
Shepheard *v.* Beetham, 244, 909, 1034
Shepherd, In the goods of, 259
— *v.* Ingram, 1293
— *v.* Mouls, 1717
— *v.* Nottidge, 1344
— *v.* Shorthose, 325, 1793
— *v.* Towgood, 1891
Shepherdson *v.* Dale, 1328
Sheppard *v.* Duke, 1924
Sheppard's Trust, *Re*, 1084, 1135
Sherer *v.* Bishop, 6, 941
Sheriff *v.* Axe, 1764
Sherman *v.* Collins, 1120
Sherratt *v.* Bentley, 934, 936
— *v.* Mountford, 963, 964

Sherrington *v.* Yates, 739
Sherwood, *Re*, 1761
— *v.* Sanderson, 33
— *v.* Smith, 1273
Shewen *v.* Vandenhorst, 1700, 1905
Shield *v.* Shield, 93
Shilling, In the goods of, 1073
Shingler *v.* Pemberton, 97
Shipbrook *v.* Lord Hinchinbrook, 1724, 1729, 1730
Shipley's, Mary, case, 1862
Shipman *v.* Thompson, 1781
Shipperdson *v.* Tower, 934
Shipton *v.* Rawlins, 448
Shipway *v.* Ball, 1280
Shires *v.* Glascock, 80
Shirley, In the goods of, 160
— *v.* Lord Ferrers, 1490
Shirt *v.* Westby, 1219, 1287
Shoman *v.* Allen, 784
Shore *v.* Weekly, 1055
— *v.* Wilson, 903
Short *v.* Smith, 130
Shovelton *v.* Shovelton, 990
Shrewsbury *v.* Hornby, 908
Shrimpton *v.* Shrimpton, 1088, 1099
Shudal *v.* Jekyll, 1200
Shum *v.* Hobbs, 1096
Shuttleworth, In the goods of, 317
— *v.* Garnet, 732
— *v.* Greaves, 749, 1024, 1074, 1081
— *v.* Howarth, 1946
Sibbering *v.* Balcarras, 1922
Sibley's Trusts, *Re*, 1077
Sibley *v.* Cook, 1075
— *v.* Perry, 974, 1024, 1025
Siboni *v.* Kirkman, 1597
Sibthorp, In the goods of, 87
— *v.* Moxom, 1226
Sidebotham *v.* Watson, 1030
Sidebottom *v.* Sidebottom, 938
Sikes *v.* Lister, 581
Silcox *v.* Bell, 358, 965
Sillick *v.* Booth, 1073, 1082, 1122
Silver *v.* Stein, 1880, 1897
Sim *v.* Doughty, 934
Simmonds, In the goods of, 79
— *v.* Cocks, 1096, 1113, 1124
Simmons, *Ex parte*, 560
— *v.* Bolland, 1204
— *v.* Gutteridge, 1179
— *v.* Rose, 1583
— *v.* Simmons, 967
— *v.* Vallance, 1025, 1026, 1211
Simon *v.* Barber, 924
Simons *v.* Milman, 256, 342
Simpson *v.* Chapman, 1748
— *v.* Gutteridge, 817
— *v.* Henning, 1623
Simpson *v.* Morley, 801, 863
— *v.* Peach, 1122
— *v.* Vickers, 1132, 1133
Sims *v.* Doughty, 1171
Sinclair, In the goods of, 86
Sing *v.* Leslie, 948
Singleton *v.* Gilbert, 942
— *v.* Tomlinson, 87, 88, 314, 330, 1317, 1350
Sinnett *v.* Herbert, 912, 920, 1583
Sisson *v.* Giles, 580
— *v.* Shaw, 1272, 1273
Sitwell, *Ex parte*, 1457
— *v.* Bernard, 1247, 1258
Skeffington *v.* Budd, 791
— *v.* White, 365, 382, 414, 450
— *v.* Whitehurst, 791
Skelton *v.* Hawling, 1866, 1867
Skey *v.* Barnes, 1110, 1111, 1137, 1294
Skinner *v.* Ogle, 164, 166, 169, 180
— *v.* Sweet, 1897
Skinner's Trusts, *Re*, 1154
Skipper *v.* King, 1115
Skirrow *v.* Skirrow, 1947
Skirving *v.* Williams, 1039, 1252
Skottowe *v.* Young, 1454
Skrymsher *v.* Northcote, 1324
Slade's case, 699, 762
Slade *v.* Fooks, 965
Slanning *v.* Style, 187, 672, 873, 1044, 1049, 1253
Slater *v.* Alvey, 247
— *v.* Dangerfield, 973
— *v.* Lawson, 1841
— *v.* May, 433, 439
— *v.* Wheeler, 1615, 1620
Slatter *v.* Noton, 1192
— *v.* Slatter, 1360
Sleap *v.* Newman, 1642
Sleech *v.* Thorington, 1026, 1030, 1224, 1278, 1285
Sleeman *v.* Wilson, 1740
Sleight *v.* Lawson, 1891
Slevin, *Re*, 924
Slingsby *v.* Grainger, 1055
Slinn, In the goods of, 94, 95
Sly *v.* Sly, 135
Smale *v.* Graves, 1521
Small *v.* Wing, 1769
Smallman *v.* Goolden, 1299
Smallwood *v.* Bishop of Lichfield, 595, 1538
— *v.* Bishop of Conventry, 699, 762
Smart, In the goods of, 300
— *v.* Clark, 937
— *v.* Prujean, 87, 88
Senart *v.* Tranter, 324
Smedley *v.* Philpot, 1536, 1545
— *v.* Varley, 1748

Smee *v.* Bryer, 67
— *v.* Smee, 28
Smell *v.* Dee, 1094
Smethurst *v.* Tomlin, 186
Smith's Estate, *Re*, 920, 952, 1910
— Trusts, *Re*, 1077, 1079, 1081
— (Betty) Trusts, 1134
Smith, In the goods of, 48, 54, 87, 159, 206, 273, 316, 385
— *Re*, 164, 944, 1265, 1294, 1571
— *v.* Acton, 1927
— *v.* Anderson, 1507
— *v.* Armitage, 1892
— *v.* Attersoll, 329, 330
— *v.* Barneby, 992, 999
— *v.* Butcher, 930, 967, 969, 970
— *v.* Campbell, 982, 984, 1011
— *v.* Casen, 691
— *v.* Chambers, 1759
— *v.* Claxton, 587
— *v.* Conder, 1198, 1375
— *v.* Cowdery, 1145
— *v.* Crofts, 196
— *v.* Cunningham, 126, 166
— *v.* Dale, 1938, 1939
— *v.* Davies, 837, 1854
— *v.* Day, 1206
— *v.* Dearmer, 165
— *v.* Dudley, 997
— *v.* Evans, 66
— *v.* Everett, 817, 821, 1521
— *v.* Eyles, 860, 1864
— *v.* Fitzgerald, 1031, 1319
— *v.* Forty, 1838
— *v.* Guy, 1915
— *v.* Harris, 72
— *v.* Hibbert, 581
— *v.* Hopkinson, 311
— *v.* Horsfall, 975
— *v.* Jones, 352
— *v.* Langford, 1765
— *v.* Lidiard, 963
— *v.* Lucas, 1306
— *v.* Lyne, 1163
— *v.* Matthews, 1279
— *v.* Milles, 243
— *v.* Morgan, 1796
— *v.* New South Wales Bank, 812
— *v.* Oliver, 922, 1074
— *v.* Osborne, 1334
— *v.* Palmer, 996, 1097, 1103, 1104, 1385
— *v.* Price, 842
— *v.* Pybus, 1081
— *v.* Simonds, 715, 716
— *v.* Smith, 77, 91, 282, 669, 686, 826, 988, 1078, 1116, 1118, 1171, 1204, 1205, 1278, 1372, 1571, 1727, 1743, 1776, 1875, 1881
Smith *v.* Spencer, 1127
— *v.* Streatfield, 939
— *v.* Tebbitt, 28
— *v.* Tracey, 359, 1367
Smithy *v.* Hinton, 1878
Smither *v.* Willock, 1137
Smithley *v.* Cholmeley, 250
Smout *v.* Ilbery, 1656
Smyth *v.* Smyth, 427, 1041
Snape *v.* Norgate, 779
— *v.* Webb, 380, 404
Sneesby *v.* Thorne, 817
Snellgrove *v.* Baily, 687
Snelling's case, 340
Snelson *v.* Corbett, 678, 1044, 1564
Snow *v.* Booth, 1927
— *v.* Strutt, 842
— *v.* Teed, 989
Snowball *v.* Proctor, 946
Soady *v.* Turnbull, 1896
Soam *v.* Bowden, 1650
Soames *v.* Martin, 1155
Soar *v.* Dolman, 125
Sobey *v.* Sobey, 1930, 1933
Solicitor-General *v.* Law Reversionary Interest Society, 1457
Sollers *v.* Lawrence, 1593, 1610
Solomon *v.* Solomon, 1572
Somerset, In the goods of, 444
Somerville *v.* Somerville, 1393, 1394, 1398
Soresby *v.* Hollins, 907, 915, 919
Sotheran *v.* Dening, 152, 153
South *v.* Bloxham, 1585
Southall *v.* Jones, 94, 158
Southby *v.* Stonehouse, 933
Southcott *v.* Watson, 1342, 1346
Southcote *v.* Hoare, 733
Southern *v.* Woollaston, 1109
Southmead, In the goods of, 387, 442
Southouse *v.* Bate, 1058
Sowerby, In the goods of, 350
Sowerby's Trust, *Re*, 1074, 1493
Spackman *v.* Holland, 1769
— *v.* Timbrell, 801, 1559
Sparke *v.* Sparke, 615, 616
Sparkes *v.* Crofts, 423, 424, 427
— *v.* Restal, 1537
Sparling *v.* Parker, 910, 946, 1247
Sparrow *v.* Josselyn, 1031
Speakman, *Re*, 1076
— *v.* Speakman, 978
Speight *v.* Gaunt, 1701, 1720, 1721, 1722, 1723, 1733
Spence's case, 1684
Spencer's case, 627, 1845
Spencer *v.* Spencer, 951, 1190
— *v.* Ward, 1017
— *v.* Wilson, 1100, 1101
Spensley's Estate, *Re*, 1936
Spicer *v.* James, 891, 1521

Spiers *v.* Morris, 1875
Spinks *v.* Robins, 1197, 1200
Spire *v.* Smith, 1157
Spirett *v.* Willows, 1278, 1279, 1281
Spirt *v.* Bence, 933
Spode *v.* Smith, 1202
Spong *v.* Spong, 1033, 1584
Spooner's Trusts, *Re*, 1321
Spooner *v.* Brewster, 635
Sprackling *v.* Ranier, 942
Spratt *v.* Harris, 201, 300, 321, 544
Sprigge *v.* Sprigge, 125, 135
Spring *v.* Biles, 981
Springett *v.* Jenings, 1319
Spurrell *v.* Spurrell, 1330
Spurstow *v.* Prince, 699
Spurway *v.* Glynn, 1286, 1583
Spyer *v.* Hyatt, 1560
Squib *v.* Wyn, 349, 1358
Squire *v.* Mayer, 646
Squires *v.* Ashford, 1278
St. Albans, Duke of, *v.* Beauclerk, 1158
St. Helens, Lord, *v.* Lady Exeter, 167, 291
St. John *v.* Bawdripp, 1594
— Lord, *v.* Boughton, 1925, 1927
Stacey *v.* Elph, 230, 1737
Stackpole *v.* Beaumont, 1140, 1280
Stackpoole, In the goods of, 455
— *v.* Howell, 1147, 1148
— *v.* Stackpoole, 836, 839, 1757, 1769
Stafford *v.* Buckley, 718, 719, 933
— *v.* Fiddon, 1750
Stag *v.* Punter, 887
Stahlschmidt *v.* Lett, 895, 1699, 1800
Staines *v.* Morris, 1632
— *v.* Stewart, 295
Stainton, In the goods of, 362
— *v.* The Carron Company, 188, 1917, 1918
Stair *v.* Macgill, 1247
Stamford's case, 211
Stamford Society, *Ex parte*, 857
Stammers *v.* Halliley, 1222
Stamper *v.* Barker, 754
— *v.* Pickering, 1242
Standen *v.* Standen, 1011, 1578
Standley's Estate, *Re*, 953, 956
Stanford's case, 1785
Stanhope's Trusts, *Re*, 971, 1061
Staniland *v.* Willott, 682, 687
Stanley *v.* Bernes, 303, 431, 459, 462, 821, 1392, 1395, 1399
— *v.* Potter, 1030, 1185
— *v.* Stanley, 293, 360, 1356, 1378, 1379
Stansfield, *Re*, 1081, 1086
Stanton *v.* Lambert, 348
Stanwix's case, 1073
Stapleton *v.* Cheales, 1094
— *v.* Colville, 1582
— *v.* Conway, 1294
— *v.* Stapleton, 937
— *v.* Truelock, 202, 1178
Stark, In the goods of, 463
Starnes *v.* Marten, 32
Starr *v.* Newberry, 933
Stasby *v.* Powell, 864
Statham *v.* Bell, 1134
Stead *v.* Hardaker, 1591
— *v.* Mellor, 98
— *v.* Platt, 1109
Steadman, In the goods of, 445, 450
— *v.* Powell, 46
Stearn *v.* Mills, 1855
Stedham, In the goods, of, 167
Steed *v.* Cragh, 612
Steele, In the goods of, 167, 168, 170, 181
Steer, *Re*, 1395
— *v.* Steer, 1880
Steevens' Trusts, *Re*, 969
Steinmetz *v.* Halthin, 1282
Stelfox *v.* Sugden, 1212, 1213
Stenhouse *v.* Mitchell, 1064
Stent *v.* Robinson, 1288
Stephens *v.* Frost, 1099
— *v.* Hotham, 1643
— *v.* Lawry, 1273
— *v.* Stephens, 1305
— *v.* Taprell, 115
— *v.* Totty, 1276
— *v.* Venables, 1284, 1895
Stephenson, In the goods of, 349
— *v.* Dowson, 1020, 1029, 1063
— *v.* Heathcote, 1578, 1579
Sterndale *v.* Hankinson, 1690, 1915, 1929, 1930
Sterne, *Ex parte*, 599
Stert *v.* Platel, 988
Stevens' Will, *Re*, 1057
Stevens *v.* Bagwell 49
— *v.* Evans, 1651
Stevenson *v.* Abingdon, 975
— *v.* Gullan, 1330
— *v.* Masson, 1195, 1395
— *v.* Mayor of Liverpool, 1229
— *v.* Wood, 489
Steward *v.* Cotton, 1051
Stewart, *Re*, 582
— In the goods of, 88, 185, 192, 306, 366, 385
— *v.* Denton, 1647
— *v.* Edmonds, 345, 1796
— *v.* Jones, 1076
— *v.* Stewart, 1343, 1357, 1370, 1371
Stickney *v.* Sewell, 1705, 1708

Stiffe *v.* Everitt, 744
Stiles *v.* Guy, 1691, 1703
Still *v.* Hoste, 1015
Stirling *v.* Lydiard, 1192
Stirling-Maxwell *v.* Cartwright, 369, 1390, 1529
Stockdale *v.* Bushby, 1011
— *v.* Nicholson, 992, 995
Stocken, *Re*, 1812
— *v.* Dawson, 1760
— *v.* Stocken, 1169, 1272
Stocker *v.* Harbin, 1583
Stockil *v.* Punchon, 89
Stocks *v* Barré, 1054
— *v.* Dodsley, 1004
Stockwell *v.* Ritherdon, 111, 159, 291
Stoddart *v.* Grant, 138, 139, 140
Stoddart *v.* Nelson, 964
Stodden *v.* Harvey, 796, 849
Stokes *v.* Cheek, 1062
— *v.* Heron, 946, 1059
— *v.* Porter, 208
Stone *v.* Forsyth, 50
— *v.* Greening, 929
— *v.* Parker, 1571
Stones *v.* Cooke, 735
Stonor's Trusts, *Re*, 663
Stopford *v.* Lord Canterbury, 1273
Storrs *v.* Benbow, 942, 1116
Story *v.* Fry, 1533, 1842
Stote *v.* Tyndall, 370
Stott *v.* Hollingworth, 1243
Stow *v.* Danvenport, 1490, 1506, 1508, 1515
Stracey, In the goods of, 8
Straker *v.* Wilson, 1247
Strange *v.* Harris, 1882
— *v.* Smith, 1144
Strathmore *v.* Bowes, 165
Stratton *v.* Best, 1305
— *v.* Grimes, 1142
— *v.* Linton, 363
— *v.* Stratton, 430
Straus *v.* Goldsmid, 902
Strauss *v.* Schmidt, 157
Streaker, In the goods of, 114
Streatfield *v.* Cooper, 1048
Streatley, In the goods of, 85, 93
Stretch *v.* Pynn, 354
— *v.* Watkins, 1058, 1268
Strickland *v.* Strickland, 1588, 1878
— *v.* Symons, 1682, 1816, 1900, 1901
Stringer's Estate, *Re*, 1131
Stringer *v.* Gardiner, 962, 1013
Strong *v* Bird, 1180
— *v.* Ingram, 1158
— *v.* Teatt, 932
Strother *v.* Dutton, 1106
Stroud *v.* Dandridge, 1853
Stroud *v.* Gwyer, 1249, 1744
— *v.* Stroud, 1206, 1859
Stuart *v.* Bute, 1042
Stubbs' Estate, *Re*, 1849
Stubbs *v.* Sargon, 1005
Stubs *v.* Stubs, 635
Studd *v.* Cook, 930, 940
Stukeley *v.* Butler, 621
Stumm *v.* Dixon, 1835
Sturge and Great Western Railway Co., *Re*, 987
Sturgess . Pearson, 11 37
Sturgis *v.* Corp, 54
— *v.* Darell, 1791, 1845
Style *v.* Tomson, 829
Styles *v.* Guy, 1703, 1724, 1732, 1734
Styth *v.* Monro, 995, 996, 1001
Sudbury *v.* Brown, 1065
Suffolk *v.* Lawrence, 1807
Sugden *v.* Crossland, 1744
Sugden *v.* Lord St. Leonards, 132, 134, 135, 136, 295, 318, 319, 490
Suggitt's Trusts, *Re*, 1278
Suisse *v.* Lowther, 1156, 1159, 1194, 1908
Summerell *v.* Clements, 282
Summers, In the goods of, 77
Sumner *v.* Powell, 1621
Sunderland, In the goods of, 87, 88, 90
Surman *v.* Wharton, 606
Surtees *v.* Parkin, 1589
Sutherland, In the goods of, 462
— *v.* Cooke, 1035, 1040, 1252
Sutton, *Re*, 1054
— *v.* Drax, 313
— *v.* Sadler, 16, 289, 296
— *v.* Sharp, 1751, 1753
— *v.* Smith, 321
— *v.* Wilders, 1720
Suwerkrop *v.* Day, 407, 438
Swabey *v.* Goldie, 1386
— *v.* Swabey, 540, 1491
Swain, *Re*, 1928
Swaine *v.* Burton, 1327
— *v.* Kennerley, 954
Swainson *v.* Swainson, 1567
Swallow *v.* Binns, 1114, 1880
— *v.* Emberson, 1831
Swan, *Re*, 1283
Sweet, In the goods of, 244
Sweeting *v.* Prideaux, 936
— *v.* Sweeting, 1485
Sweetland *v.* Sweetland, 67, 71
Swift, *Ex parte*, 1275
— *v.* Swift, 302, 365, 929, 975, 1931
Swinburne, *Re*, 1324
Swindell *v.* Bulkeley, 1788, 1845
Swindin, In the goods of, 113
Swinfen *v.* Swinfen, 34, 312, 1046, 1721
Swinford, In the goods of, 78, 92
Swinton *v.* Bailey, 122

Swire, *Re*, 1909
Sydney *v.* Vaughan, 1088
Syer *v.* Gladstone, 1310
Sykes, In the goods of, 113, 114, 294
— *v.* Meynal, 754
— *v.* North Eastern Railway Co., 704
— *v.* Sykes, 215, 1080, 1324, 1797
Symers *v.* Jobson, 967, 968
Symes *v.* Green, 16
Symonds *v.* Marine Society, 908
Symons, *Re*, 1771, 1772, 1892
Sympson *v.* Hornsby, 1362
Synge *v.* Synge, 1305

T.

TAAFE *v.* Conmee, 1329, 1330, 1334
Tabor *v.* Grover, 602
Tagart *v.* Hooper, 132
Tait *v.* Lord Northwick, 1579
Talbot *v.* Andrews, 379
— *v.* Frere, 885
— *v.* Radnor, 1310
— *v.* Shrewsbury, 1162
Tankerville *v.* Fawcett, 1567
Tanner *v.* Byne, 870
— *v.* Dancey, 1936
— *v.* Tebbutt, 1133
Tanqueray-Willaume & Landau, *Re*, 577, 578, 1923
Tapley *v.* Eagleton, 1303
Tappenden *v.* Walsh, 54, 323
Tarbottom *v.* Earle, 1212
Tarn *v.* Commercial Bank of Sydney, 252, 255, 1780
Tatam *v.* Williams, 1922
Tate *v.* Clarke, 931, 972
— *v.* Hilbert, 681, 682, 687, 688, 689, 690
— *v.* Leithead, 682, 689, 690
Tatham *v.* Vernon, 975, 1099
— *v.* Williams, 1930
— *v.* Wright, 36
Tatlock *v.* Jenkins, 1583
Tatnall *v.* Hankey, 308, 328
Tattersall *v.* Howell, 1123
Taunton *v.* Morris, 1278, 1283
Tawney *v.* Ward, 1115
Taylor, In the goods of, 85, 386
Taylor's Estate, *Re*, 935, 939, 1069, 1171, 1556, 1567
Taylor, *Re*, 582, 963, 966, 1012, 1761
— *v.* Beverley, 992, 1330
— *v.* Clarke, 1243, 1245, 1250
— *v.* D'Egville, 95
— *v.* Diplock, 401, 402, 460, 1072
— *v.* Frobisher, 1113, 1122
— *v.* Gerst, 1751
— *v.* Harris, 778
Taylor *v.* Hawkins, 806
— *v.* Haygarth, 580, 1342, 1344, 1345, 1347, 1386
— *v.* Hibbert, 1243
— *v.* Holman, 1863, 1871
— *v.* Johnson, 1268, 1293, 1294
— *v.* Langford, 1105
— *v.* Newton, 426, 846
— *v.* Plumer, 1544
— *v.* Popham, 1132
— *v.* Richardson, 485
— *v.* Rundell, 1890
— *v.* Shore, 401, 496
— *v.* Shum, 1631
— *v.* Southgate, 1909
— *v.* Tabrum, 1701
— *v.* Taylor, 432, 584, 585, 1035, 1203, 1212, 1374, 1375, 1376, 1627, 1629
Taynton *v.* Hannay, 434, 438
Teague *v.* Wharton, 386
Teaps's Trusts, *Re*, 1324
Tebbs *v.* Carpenter, 944, 1692, 1701, 1703, 1709, 1724, 1750, 1751, 1752, 1758
Tegetmeyer *v.* Lumley, 1781
Telford *v.* Morison, 848
Tempest *v.* Lord Camoys, 1899, 1900
— *v.* Tempest, 899, 1021, 1048, 1224, 1590
Temple *v.* Temple, 741
— *v.* Walker, 323
Templeman *v.* Warrington, 1110, 1138
Tenant *v.* Bray, 1129
Tench *v.* Cheese, 1584
Tennant *v.* Heathfield, 1134
Ternegan *v.* Glass, 1931
Terrell *v.* Mathew, 1728
Terrewest *v.* Featherby, 1802, 1911
Terrible, In the goods of, 169
Terry *v.* Terry, 1707
Terry's Will, *Re*, 989
Tewtry *v.* O'Regan, 710
Teynham *v.* Webb, 947, 950
Thacker *v.* Wilson, 1545, 1643
Tharp, In the goods of, 52, 58, 323
Tharpe *v.* Stallwood, 553, 556
Thatcher's Trusts, *Re*, 1122, 1266, 1270
Theebridge *v.* Kilburne, 598, 968
Theed's Settlement, *Re*, 948, 1108
Thellusson *v.* Rendlesham, 976
— *v.* Woodford, 930, 939, 940, 1304
Therry *v.* Henderson, 1908
Thirlwall, *Re*, 402
Thirt *v.* Robinson, 358
Thomas, *Re*, 560, 1645
— *v.* Archbishop of Canterbury, 458
— *v.* Attorney-General, 1290

Thomas *v.* Baker, 402
— *v.* Bennet, 1163
— *v.* Butler, 401, 496
— *v.* Dunn, 784
— *v.* Frazer, 1621
— *v.* Griffith, 1314, 1915
— *v.* Hole, 979, 1385
— *v.* Howell, 148, 924, 1128
— *v.* Jones, 47, 176, 179, 1907, 1944, 1945
— *v.* Kemeys, 604
— *v.* Ketteriche, 358, 1381
— *v.* Montgomery, 1241, 1261, 1479
— *v.* Thomas, 264
— *v.* Wilberforce, 1101
Thompson's Trusts, *Re*, 970
Thompson, In the goods of, 76
— *Re*, 1650
— *v.* Advocate-General, 1501
— *v.* Andrews, 1688
— *v.* Beasley, 974
— *v.* Clive, 1947
— *v.* Cooper, 891
— *v.* Donaldson, 477
— *v.* Dunn, 1900
— *v.* Griffin, 1272
— *v.* Hempenstall, 167
— *v.* Percival, 1623
— *v.* Pinchell, 793
— *v.* Reynolds, 1779
— *v.* Robinson, 962, 963
— *v.* Shakespear, 920
— *v.* Stanhope, 1799
— *v.* Stent, 762
— *v.* Thompson, 720, 910, 1694
— *v.* Towne, 581, 1550
Thompson *v.* Watts, 1361
— *v.* Whitelock, 1068, 1074, 1320
Thomson, In the goods of, 77, 291
— *v.* Eastwood, 1927
— *v.* Grant, 891, 1531
— *v.* Hall, 91
— Harding, 223
Thornber *v.* Wilson, 918
Thornbrough *v.* Baker, 602
Thorncroft *v.* Lashmar, 96
Thorne, In the goods of, 105, 158
— *v.* Kerr, 1872, 1987
— *v.* Rooke, 146, 171, 1160
— *v.* Watkins, 1388, 1389
Thornhill *v.* Thornhill, 1078
Thornton, In the goods of, 125
— *v.* Curling, 303, 475
— *v.* Ellis, 1040, 1248, 1252
— *v.* Howe, 901, 919
— *v.* Kempson, 908, 909
— *v.* Thornton, 1324
Thorold *v.* Thorold, 328
Thorpe *v.* Bestwick, 901
— *v.* Jackson, 1620
Threlfall *v.* Wilson, 314, 834
Thrupp *v.* Collett, 1008
— *v.* Harman, 673
Thruston's Will, *Re*, 1122
Thruston *v.* Anstey, 1294
Thruxton *v.* Attorney-General, 1544
Thursby *v.* Plant, 1631
— *v.* Thursby, 1252
Thursden *v.* Warthen, 1630
Thurston, *Re*, 1322
Thwaites *v.* Forman, 1223
Thynne *v.* Glengall, 1163, 1164, 1167
— (Lord John) *v.* Stanhope, 127
Tichborne *v.* Tichborne, 428, 430
Tickner *v.* Old, 1252
— *v.* Smith, 1936
Tidd *v.* Lister, 1283, 1584, 1585
Tidswell *v.* Ankerstein, 1545
— *v.* Bowyer, 1392
Tidwell *v.* Ariel, 1074, 1075
Tiffin *v.* Longman, 980, 988
— *v.* Tiffin, 1544
Tilney *v.* Norris, 1635
Tilt *v.* Bartlett, 751
Timins *v.* Stackhouse, 1078
Timmis *v.* Platt, 1787
Timms, *Re*, 1778, 1910
Timson *v.* Ramsbottom, 1727
Tindal, *Ex parte*, 1599
Tindall's Trust, *Re*, 264
Tingrey *v.* Brown, 204, 409
Tippett *v.* Tippett, 282, 312
Tipping *v.* Power, 851, 887, 1936
— *v.* Tipping, 635, 674, 677, 678, 1564
Tippins *v.* Coates, 1617
Titcomb *v.* Butler, 942
Titley *v.* Wolstenholme, 830
Todd *v.* Bielby, 1221
— *v.* Wilson, 1761
— *v.* Winchelsea, 80
Toldervy *v.* Colt, 1136
Toller *v.* Attwood, 931, 1109
Tollner *v.* Marriott, 1133, 1930
Tolson *v.* Collins, 1166, 1169
Tombs *v.* Roch, 1564, 1589, 1592
Tomkins *v.* Blane, 1305
— *v.* Colthurst, 1589
— *v.* Tomkins, 1017
Tomlin *v.* Beck, 212, 215
— *v.* Tomlin, 1179
Tomlinson, In the goods of, 50, 182, 270, 327, 328
— *v.* Tomlinson, 910
Toner *v.* Thompson, 1936
Tooker *v.* Annesley, 622
Toomes *v.* Etherington, 781
Toomy, In the goods of, 192

Tootal's Estate, *Re*, 1035, 1214
— Trusts, *Re*, 305, 1398
Topham *v.* Morecroft, 1830
Toplis *v.* Baker, 1073, 1075
— *v.* Hurrell, 1728
Topping, In the goods of, 276
Torre *v.* Browne, 1289, 1290
Torres *v.* Franco, 1114
Toulmin *v.* Copland, 1883
Tourton *v.* Flower, 242, 298
Toussaint *v.* Hartop, 782
Tower *v.* Rous, 1579, 1581
Towers *v.* Moor, 1615
Townend *v.* Townend, 573, 1745, 1757, 1894
Townley *v.* Bedwell, 918
— *v.* Watson, 124, 125
Towns *v.* Mead, 1842
— *v.* Wentworth, 930, 931, 936
Townsend *v.* Barber, 1727
— *v.* Deacon, 1791
— *v.* Martin, 1028
— *v.* Mostyn, 1568
— *v.* Townsend, 1908, 1909
Townshend, In the goods of, 273
— *v.* Carus, 923
— *v.* Early, 942
— *v.* Windham, 1007, 1550
Townson *v.* Tickell, 819, 1231, 1239
Tracy *v.* Butcher, 1109
Trafford *v.* Berrige, 1045
Trail *v.* Bull, 1234, 1238
Trappes *v.* Harter, 646
Trattle *v.* King, 557
Travers *v.* Townsend, 1936
Travis *v.* Milne, 1688, 1918
Treeby, In the goods of, 123
Treharne *v.* Layton, 938
Treloar *v.* Lean, 121, 122
Tremeere *v.* Morison, 1640, 1642
Trestrail *v.* Mason, 1572, 1573
Trethewy *v.* Ackland, 1617, 1849
— *v.* Helyar, 999, 1316, 1591, 1948
Trevanion, In the goods of, 84
Trevelyan *v.* Trevelyan, 135, 318, 319
Treves *v.* Townshend, 1753
Trevor *v.* Trevor, 1068
Trewinian *v.* Howell, 1661, 1673
Trezevant *v.* Frazier, 1768
Tribe *v.* Newland, 1107, 1331
— *v.* Tribe, 81
Trick, *Re*, 1820
Trimlestown *v.* D'Alton, 38, 41
— *v.* Trimlestown, 494
Trimmell *v.* Fell, 58
Trimmer *v.* Bayne, 1195, 1197, 1199
— *v.* Jackson, 78
Trinder *v.* Trinder, 176, 1302
Trinmel, In the goods of, 81
Triquet *v.* Thornton, 580
Trott *v.* Buchanan, 1576, 1579, 1581, 1583
— *v.* Skidmore, 69
Troughton *v.* Binkes, 1916
— *v.* Troughton, 1550
Trower *v.* Butts, 942
— *v.* Cox, 498
Trufort, *Re*, 1387, 1390, 1391
Truro, In the goods of, 87, 88, 89, 180
Trutch *v.* Lamprell, 1724, 1732
Trye *v.* Corporation of Gloucester, 914
Tubby *v.* Tubby, 1560
Tucke, Sir Brian, case of, 1601
Tucker, In the goods of, 300, 366
— *Re*, 662
— *v.* Boswell, 1247
— *v.* Burrow, 1200
— *v.* Harris, 1115
— *v.* Inman, 46, 48, 49, 50, 323
— *v.* Phipps, 331
Tuckey *v.* Hawkins, 1776
— *v.* Henderson, 1158
Tugman *v.* Hopkins, 52
Tugwell *v.* Heyman, 1679, 1681
— *v.* Scott, 956
Tulk *v.* Houlditch, 1133
Tullett *v.* Armstrong, 665
Tunstall *v.* Brachan, 1120
Tupper *v.* Tupper, 131, 155
Turcan, *Re*, 1904
Turing *v.* Turing, 1330
Turner's case, 608
Turner, In the goods of, 132, 264, 349, 385
— *Re*, 862, 992, 993
— *v.* Buck, 1286, 1605
— *v.* Cameron, 642
— *v.* Cameron's Coalbrook Company, 1604
— *v.* Capel, 972, 978
— *v.* Connor, 1911
— *v.* Cox, 852, 1179, 1533
— *v.* Crane, 756
— *v.* Davies, 506, 1798
— *v.* Dorgan, 1908
— *v.* Hardey, 817, 820
— *v.* Martin, 1074, 1219, 1493
— *v.* Mullineux, 1508
— *v.* Newport, 1249
— *v.* Ogden, 917, 919
— *v.* Turner, 718, 1270, 1292, 1702, 1750
Turpine *v.* Forreyner, 932
Turquand *v.* Kirby, 1626
Turwin *v.* Gibson, 854
Tussaud's Estate, *Re*, 1168, 1170, 1196, 1197
Tweedale, In the goods of, 114
— *v.* Tweedale, 1059, 1157
Twigg's Estate, *Re*, 1359, 1360

Twining *v.* Powell, 1196, 1199
Twisden *v.* Twisden, 1371
— *v.* Wise, 749
Twycross *v.* Grant, 699
Twyford *v.* Trail, 409
Tylden *v.* Hyde, 575, 881
Tyler *v.* Bell, 296, 297, 1827, 1915
— *v.* Jones, 788
— *v.* Merchant Tailors Co., 114
Tyndale *v.* Wilkinson, 1385
Tynt *v.* Tynt, 678
Tyrone *v.* Waterford, 946, 1041, 1043
Tyrrell's, Lady, case, 674, 677
— *v.* Tyrrell, 1290
Tyson *v.* Jackson, 1927
Tytherleigh *v.* Harbin, 1077

U.

UDNY *v.* Udny, 1395
Umbers *v.* Jaggard, 1122
Underhill *v.* Devereux, 597
Underwood *v.* Hatton, 1208
— *v.* Jee, 1909
— *v.* Morris, 1140
— *v.* Stevens, 1724, 1730, 1735, 1736
— *v.* Wing, 351, 402, 1072, 1136
United States, President of, *v.* Drummond, 1392
Upfill *v.* Marshall, 172
Upton *v.* Brown, 953
— *v.* Ferrers (Lord), 636
— *v.* Prince, 1194
— *v.* Vanner, 1212
Urquhart *v.* Butterfield, 1395, 1397
— *v.* Fricker, 281
— *v.* King, 1342, 1346, 1348
— *v.* Urquhart, 988
Usher, *Ex parte*, 855
Utterson *v.* Mair, 187, 1916
— *v.* Utterson, 134
Utterton *v.* Robins, 86, 88, 164

V.

VACHELL *v.* Roberts, 1039, 1252
Vaisey *v.* Reynolds, 628, 1051, 1052
Vanbrough *v.* Cock, 489
Van Bunan *v.* Piffard, 1909
Vance *v.* Vance, 669, 671
Vandeleur *v.* Vandeleur, 1582
Vandenberg *v.* Palmer, 1481
Vandergucht *v.* Blake, 1082
— *v.* De Blaquiere, 735
Vanderplank *v.* King, 1329
Vanderzee *v.* Aclom, 1080
Vane *v.* Rigden, 803
Van Gelden & Co. *v.* Sowerby Bridge, &c., 1777
Van Gheluive *v.* Nerinckx, 862, 1849
Van Hagan, *Re*, 1322
Vanthienen *v.* Vanthienen, 298
Vanquelin *v.* Bouard, 298, 567
Van Straubenzee *v.* Monck, 87, 88, 326
Vanzeller *v.* Vanzeller, 1933
Vardon's Trusts, *Re*, 1306
Varley *v.* Winn, 1084, 1290
Vauchamp *v.* Bell, 930
Vaughan, *Re*, 918, 921, 925
— *v.* Browne, 220
— *v.* Buck, 1024, 1039, 1252, 1278
— *v.* Lord Headfort, 947
— *v.* Thurston, 1936
— *v.* Vanderstegen, 1550
Vaux *v.* Henderson, 969, 1006
Vawdry *v.* Geddes, 1096, 1097, 1101, 1109, 1113
Veal *v.* Veal, 686, 1280
Veale *v.* Gatesdon, 1852
Veghelman *v.* Kighley, 1696
Veiga, In the goods of, 231, 367
Velho *v.* Leite, 201
Venning *v.* Lloyd, 1801
Veret *v.* Duprez, 433
Vernon *v.* Curtis, 892
— *v.* Egmont, 1204, 1208
— *v.* Manvers, 1583
Verulam, Lord, *v.* Bathurst 599, 968
Vez *v.* Emery, 1698
Vezey *v.* Jamson, 923, 924, 1845
Vibart *v.* Coles, 883, 1848, 1850
Vickers *v.* Bell, 229, 1804
— *v.* Cowell, 571
— *v.* Pound, 1032
— *v.* Scott, 1248
Viesca *v.* D'Aramburu, 306, 366
Vigor *v.* Harwood, 1247
Vigrass *v.* Binfield, 1707
Vincent, *Re*, 1908
— *v.* Newcombe, 1024, 1252
— *v.* Sharpe, 1520, 1523
Viner *v.* Francis, 941, 1081
Vinnicombe *v.* Butler, 77, 91
Vivian *v.* Campion, 711
— *v.* Mills, 1099
Vize *v.* Stoney, 1093, 1099
Von Buseck, In the goods of, 10, 309
Von Brockdorff *v.* Malcolm, 1324
Vorley *v.* Richardson, 1330
Vowles, *Re*, 1939
Vulliamy *v.* Noble, 1520, 1618, 1623
Vynior's case, 8, 107
Vyse *v.* Foster, 1744, 1745,,1752, 1756

W.

WACHER, *Re*, 1888
Wade *v.* Marsh, 797
— *v.* Saunders, 1282

Wadesworth *v.* Andrews, 503
Wadley *v.* North, 1105
Wadsworth *v.* Guy, 1649
Wagner *v.* Mears, 281
Wagstaff *v.* Crosby, 1137, 1330
— *v.* Wagstaff, 176, 1302
Wain *v.* Warlters, 1674
Wainford *v.* Barker, 842
Wainwright, In the goods of, 1073
— *v.* Bendlowes, 1581
Waise *v.* Whitfield, 1581
Wait, *Re*, 1324
Waite *v.* Combes, 1052, 1054
— *v.* Littlewood, 937, 1333
— *v.* Templer, 971
— *v.* Webb, 907, 922
— *v.* Whorwood, 1896
Wake *v.* Varah, 937, 1333
Wakefield *v.* Maffet, 1114
Wakeham, In the goods of, 202
Walcot *v.* Hall, 1315
Waldo *v.* Caley, 923
Waldron *a.* Boulter, 973, 974
Walker's Estate, *Re*, 1333
Walker's case, 1633
Walker, In the goods of, 69
— *Re*. 264
— *v.* Lord Camden, 996
— *v.* Carless, 354, 418
— *v.* Cook, 1256
— *v.* Hardwicke, 1576
— *v.* Hull, 1650
— *v.* Jackson, 1579, 1582
— *v.* Main, 1084, 1105, 1120
— *v.* Milne, 910
— *v.* Mower, 1096
— *v.* Shore, 944
— *v.* Smith, 100, 468
— *v.* Symonds, 1707, 1739
— *v.* Taylor, 1680
— *v.* Tipping, 483
— *v.* Walker, 1128
— *v.* Wetherell, 1274, 1275
— *v.* Witter, 860
— *v.* Woodward, 1757
— *v.* Woollaston, 427, 431, 438
Walkers *v.* Thorn, 100
Wall *v.* Bushby, 1893
— *v.* Colshead, 587
— *v.* Tomlinson, 748, 750, 1137
— *v.* Wall, 1288, 1291, 1508
Wallace *v.* Att.-Gen., 1446, 1502
— *v.* Auldjo, 1282
— *v.* Pomfret, 1169
Waller *v.* Barrett, 1204
— *v.* Childs, 903, 918
— *v.* Drakeford, 254, 1792
— *v.* Heseltine, 362
Wallich, In the goods of, 201
Wallinger *v.* Wallinger, 1307
Wallis *v.* Brightwell, 1297
— *v.* Hodson, 1367, 1383
— *v.* Taylor, 1004
Wallop's case, *Re*, 1450
— Trust's, *Re*, 1459, 1502
Wallop, *Ex parte*, 1016
— *v.* Hewett, 1156
Walmsley *v.* Milne, 642, 643, 646, 653, 659
Walpole *v.* Apthorp, 1033
— *v.* Cholmondely, 156
— *v.* Lord Orford, 109, 167
Walrond *v.* Walrond, 1757
Walsh, *v.* Gladstone, 474, 1157
— *v.* Walsh, 1262, 1368, 1384
— *v.* Wason, 1279
Walsham *v.* Stainton, 1613
Walter *v.* Hodge, 669, 683
— *v.* Makin, 995
— *v.* Maunde, 880
Walters *v.* Pfeil, 1794
— *v.* Walters, 888, 1558, 1561
Walton, *Re*, 971, 978
— *v.* Jacobson, 412
— *v.* Walton, 1370, 1376
Wankford *v.* Wankford, 205, 249, 250, 251, 255, 257, 258, 322, 342, 408, 788, 789, 893, 1176, 1177, 1178, 1179, 1181
Wansborough *v.* Dyer, 1675
Wansbrough *v.* Maton, 642
Warbrick *v.* Varley, 1510
Ward *v.* Audland, 1658
— *v.* Bevil, 931, 966
— *v.* Devon, 576
— *v.* Grey, 898, 977
— *v.* Lant, 1794
— *v.* Turner, 684, 685, 686, 687, 688, 691
— *v.* Ward, 1327
— *v.* Yates, 1278
Warden *v.* Jones, 666
Wardez *v.* Saunders, 778
Ware *v.* Cann, 1130
— *v.* Rowland, 987
Wargent *v.* Hellings, 134
Waring *v.* Dewbury, 555
— *v.* Lee, 959, 962
— *v.* Ward, 1570
— *v.* Waring, 22, 27, 30, 312
Warner's Settled Estates, *Re*, 1470
Warren, In the goods of, 385
Warren's Trusts, *Re*, 974, 1305
Warren *v.* Consett, 1866
— *v.* Kelson, 495
— *v.* Postlethwaite, 1029
— *v.* Rudall, 922, 1134, 1310
— *v.* Warren, 1167
Warrender *v.* Warrender, 1398
Warriner *v.* Rogers, 671

Warter *v.* Anon, 1268
Wartnaby, In the goods of, 317
Warwick *v.* Greville, 340, 359, 362, 363, 821
— *v.* Hawkins, 7
— *v.* Richardson, 1708
Wasney *v.* Earnshaw, 1830
Wasse *v.* Heslington, 579
Waterhouse *v.* Holmes, 918
Waters, In the goods of, 404
— *v.* Wood, 1068
Wathen *v.* Smith, 1163, 1166
Watkins, In the goods of, 87, 89
— *v.* Brent, 321, 432, 1794
— *v.* Cheek, 806, 1120, 1121
— *v.* Maule, 812, 1945
— *v.* Weston, 1129
— *v.* Williams, 1131
Watmough's Trusts, *Re*, 913
Watson, In the goods of, 405
— *Re*, 554, 1678, 1945
— *v.* Birch, 1924, 1930
— *v.* Brickwood, 1580
— *v.* Dennis, 744
— *v.* England, 1330
— *v.* Hayes, 1095, 1096, 1100, 1101
— *v.* Lord Lincoln, 1194
— *v.* Parker, 1905
— *v.* Row, 1938
— *v.* Reed, 1156
— *v.* Saul, 1927
— *v.* Toone, 807, 1748
— *v.* Watson, 1105, 1195, 1197, 1200
Watt *v.* Watt, 347
Watts, In the goods of, 31, 272, 405, 444, 445, 450
— *Re*, 907, 908, 911
— *v.* Crooke, 1383
— *v.* Girdlestone, 1717
— *v.* Rees, 1781
Waugh, *Re*, 1776
— *v.* Waugh, 1077
Way *v.* Bassett, 1841
Weale *v.* Ollive, 1658
Weall, *Re*, 1905, 1937
— *v.* Rice, 1161, 1167, 1168, 1169
Wearing *v.* Wearing, 1039, 1252
Weaver, In the goods of, 301, 306
— *Re*, 1912
Webb, In the goods of, 79, 387, 418
— *v.* Adkins, 252, 255, 1780
— *v.* Byng, 178, 946, 1069, 1302
— *v.* De Beauvoisin, 1583
— *v.* Grace, 1141
— *v.* Jones, 1582
— *v.* Kelly, 1293
— *v.* Kirby, 407, 434, 438
— *v.* Needham, 354, 364, 378
— *v.* Sadler, 1003
Webb *v.* Lord Shaftesbury, 1306
Webber *v.* Corbett, 1013
— *v.* Stanley, 939, 1011, 1012, 1070
— *v.* Webber, 1258
Webster's Estate, *Re*, 1076
Webster *v.* Blackman, 1853
— *v.* Boddington, 1116
— *v.* British Empire Co., 1880
— *v.* Hale, 1022, 1025, 1287
— *v.* Southey, 917
— *v.* Spencer, 820, 762, 1707
— *v.* Webster, 216, 1129, 1326, 1623, 1843, 1928
Weddall *v.* Nixon, 326
Wedderburn *v.* Wedderburn, 573, 1521, 1744, 1745, 1748, 1752, 1753, 1922
Wedgwood *v.* Denton, 178
Weeding *v.* Weeding, 582
Weeds *v.* Bristow, 963
Weeks *v.* Gore, 891
Weekes *v.* Trussell, 1607
Weigall *v.* Brome, 1538
Weir, In the goods of, 349, 417, 455
Weiss *v.* Dill, 1767
Welby *v.* Rockcliffe, 1582
— *v.* Welby, 1304
Welcden *v.* Elkington, 1287
Welch *v.* Phillips, 134
Welchman *v.* Sturgis, 554
Weldale *v.* Partridge, 579
Wellesley *v.* Beaufort, 1273
Wells, *Re*, 1266, 1268, 1273, 1701, 1881
Wells' Estate, *Re*, 956, 957
— *v.* Fydell, 1848
— *v.* Malbon, 1264
— *v.* Wells, 963
Wenham, *Re*, 1700
— *v.* Wenham, 361
Wenmoth, *Re*, 944
Wensley, In the goods of, 384
Wentworth *v.* Cock, 1597, 1598
Werderman *v.* Société Generale d'Electricité, 1776
Werner *v.* Humphreys, 763
West, *Ex parte*, 1082
— *v.* Blakeway, 657
— *v.* Cole, 1583
— *v.* Lawson, 1046
— *v.* Miller, 938
— *v.* Moore, 627, 628, 1051
— *v.* Orr, 1076
— *v.* Shuttleworth, 901, 902, 903, 904
— *v.* West, 1092, 1093
— *v.* Willby, 374, 390, 404, 417, 419
West of England Bank, *Re*, 1654
— *v.* Murch, 577
Western *v.* Chapman, 1936
Weston, In the goods of, 131
— *v.* James, 860
Westover *v.* Chapman, 1753

Westwood *v.* Southey, 1103, 1107
Wetdrill *v.* Wright, 374, 400, 402, 403
Wetenhall *v.* Dennis, 1940
Wetherby *v.* Dixon, 1199
Wetherell *v.* Howells, 625
— *v.* Wetherell, 1058
Weyland *v.* Weyland, 1374
Whale *v.* Booth, 561, 564, 801, 804, 805
Wharram *v.* Broughton, 780
— *v.* Wharram, 136, 319
Wharton *v.* Barker, 987
Whatford *v.* Moore, 1115
Whateley *v.* Spooner, 1054
Whatman, In the goods of, 167
Wheatley, *Re*, 1306
— *v.* Lane, 695, 1593, 1600, 1601, 1616, 1692, 1743, 1847, 1860, 1864, 1866, 1872
Wheeler, In the goods of, 352, 402, 1073
— *v.* Adams, 987
— *v.* Alderson, 29, 35, 288
— *v.* Bingham, 1142
— *v.* Collier, 1672
— *v.* Warner, 1145
Wheelwright, In the goods of, 234
Wheldale *v.* Wheldale, 1899
Whicker *v.* Hume, 51, 302, 465, 919, 921, 940, 1392, 1895
Whieldon *v.* Spode, 1582
Whincup *v.* Hughes, 1650
Whistler, *Re*, 578, 1923
— *v.* Webster, 1304
Whitacres *v.* Onsley, 1601, 1614
Whitaker, *Re*, 663
— *v.* Rush, 1903
— *v.* Tatham, 1349
Whitbread *v.* St. John, 944
Whitcher *v.* Penley, 978
Whitcomb *v.* Whitcomb, 1398
White, In the goods of, 83, 112, 384, 1053, 1318
White's Trusts, *Re*, 924, 979, 1329
White, *Re*, 1888
— *v.* Baker, 1331
— *v.* Barton, 1883
— *v.* Baugh, 1722
— *v.* Briggs, 989
— *v.* Chitty, 1131
— *v.* Driver, 17
— *v.* Evans, 1346, 1347
— *v.* Hight, 937, 938
— *v.* Hill, 337
— *v.* Lake, 1513
— *v.* Mullett, 254
— *v.* Repton, 104
— *v.* Trustees of the British Museum, 74
— *v.* Tyndall, 1615, 1617, 1775
— *v.* White, 43, 918, 980, 1579
— *v.* Williams, 1339, 1348
White *v.* Wilson, 24
Whitehall *v.* Squire, 221, 344, 345
Whitehead, *Ex parte*, 1270
— *v.* Sampson, 221
— *v.* Taylor, 243, 250, 255, 552
— *v.* Whitehead, 729, 1031
Whitehouse *v.* Partridge, 1932, 1933
Whiteley, *Re*, 1940
— *v.* King, 135, 296
Whitfield *v.* Clemment, 1069
— *v.* Langdale, 1070
Whitham, In the goods of, 234
Whitley *v.* Whitley, 1305
Whitmore *v.* Craven, 932
— *v.* Oxborrow, 1905
— *v.* Trelawney, 932
Whittaker, *Re*, 669, 1288, 1658
— *v.* Kershaw, 1203, 1313
— *v.* Whittaker, 1644
Whittell *v.* Dudin, 1138
Whittem *v.* Sawyer, 1282
Whittle *v.* Henning, 744, 1894
Whitworth *v.* Whyddon, 1881
Whopham *v.* Wingfield, 1264
Whorwood, *Re*, 1075
Whyte *v.* Rose, 296, 297, 302
— *v.* Whyte, 1156
Widdowson *v.* Duck, 1707
Widger, In the goods of, 387
Widmore *v.* Woodroffe, 919, 980
Wigan *v.* Rowland, 900
Wightmen *v.* Townroe, 1683
Wightwick *v.* Lord, 1316, 1535, 1716
Wigley *v.* Ashton, 1637, 1665, 1674
Wilbraham *v.* Scarisbrick, 950
— *v.* Snow, 252, 557, 761
Wilcock's Settlement, *Re*, 1131
Wilcox *v.* Gore, 677
— *v.* Huggins, 1789
— *v.* Smith, 1447
Wild's case, 967
Wilday *v.* Barnett, 1323
— *v.* Sandys, 1252
Wildbore *v.* Gregory, 1324
Wilde, In the goods of, 409
— *v.* Waters, 641
— *v.* Wilde, 669
Wildes *v.* Davies, 1150
— *v.* Dudlow, 893, 1891
Wildman's Trusts, *Re*, 1079
Wildman *v.* Wildman, 747
Wiles *v.* Gresham, 1697
Wilford's Estate, *Re*, 1328, 1341
Wilkes *v.* Lister, 1690
— *v.* Saunion, 1815
— *v.* Steward, 1707
Wilkins, *Re*, 1091, 1221, 1507, 1945
— *v.* Fry, 1682
— *v.* Hogg, 1735

Wilkins *v.* Jodrell, 1127, 1155
— *v.* Knipe, 1132
— *v.* Stevens, 1897
Wilkinson, In the goods of, 123
— *Re*, 1323, 1416, 1493, 1494, 1495
— *v.* Adam, 88, 953, 954, 956, 958
Wilkinson *v.* Barber, 915, 1515
— *v.* Cawood, 1639, 1782
— *v.* Charlesworth, 738, 1288
Wilkinson *v.* Corfield, 313
— *v.* Dent, 1305
— *v.* Duncan, 1116, 1249, 1250
— *v.* Garrett, 988
— *v.* Gordon, 349
— *v.* Henderson, 1618
— *v.* Joughin, 1016
— *v.* Lindgren, 923, 924
— *v.* Schneider, 1322
— *v.* Wilkinson, 958, 1130, 1768
Wilks *v.* Bannister, 965
— *v.* Groom, 1721
Willand *v.* Fenn, 821
Willeter *v.* Dobie, 1655
Willett *v.* Blanford, 1744, 1748, 1753
Williams, *Ex parte*, 1271, 1272
— In the goods of, 68, 69, 354 461, 841
— *Re*, 921, 925, 1115, 1324, 1801, 1908
— Estate, *Re*, 862, 1849
— *v.* Arkle, 1344
— *v.* Ashton, 112, 113, 984
— *v.* Baker, 53, 135
— *v.* Bosanquet, 1635
— *v.* Breedon, 700, 701
— *v.* Burrell, 1596, 1598, 1632
— *v.* Cary, 698
— *v.* Clark, 1097, 1111
— *v.* Davies, 669
— *v.* Evans, 154
— *v.* Fowler, 1851, 1852
— *v.* George, 1651
— *v.* Goodtitle, 164
— *v.* Goude, 22, 40, 313
— *v.* Haythorne, 1113
— *v.* Headland, 1204
— *v.* Heales, 214
— *v.* Henery, 312
— *v.* Hensman, 1326, 1341
— *v.* Hughes, 1021, 1033, 1513
— *v.* Innes, 1536, 1856
— *v.* Jones, 121, 1084, 1347, 1349, 1944, 1949
— *v.* Jukes, 381
— *v.* Kershaw, 924
— *v.* Lee, 1231, 1829
— *v.* Lewis, 966
— *v.* Llandaff (Bishop of), 1582
Williams *v.* Lomas, 1550
— *v.* Nixon, 1691, 1726, 1727, 1730, 1734, 1735
— *v.* Owen, 1302
— *v.* Powell, 1295, 1753, 1755, 1758
— *v.* Teale, 943, 975
— *v.* Tyley, 117, 131
— *v.* Wilkins, 364
— *v.* Williams, 835, 989, 1054, 1055, 1679
Williamson *v.* Advocate-General, 1489
— *v.* Naylor, 1074, 1492, 1699
— *v.* Norwitch, 220
Willing *v.* Baine, 1084
Willis *v.* Curtois, 1049, 1065
— *v.* Kimble, 1765
— *v.* Lowe, 67
— *v.* Plaskett, 1053
Willmott *v.* Jenkins, 1217
Willock *v.* Noble, 47, 48, 49, 58, 179
Willoughby *v.* Middleton, 1306
Willoughby-Osborne *v.* Holyoake, 1322
Willox *v.* Rhodes, 1021, 1033
Wills *v.* Rich, 250, 255, 427, 431
— *v.* Wills, 938
Willson *v.* Carmichael, 1757, 1760
— *v.* Pack, 672
Wilmer *v.* Currey, 1621, 1622
Wilmot, In the goods of, 196, 203
— *v.* Flewitt, 1331
— *v.* Wilmot, 930, 937
— *v.* Woodhouse, 1170
Wilmott's Trusts, *Re*, 1114
Wilson's Trusts, *Re*, 940, 953
Wilson, In the goods of, 93, 167, 293
— *Re*, 1386, 1810, 1812, 1820
— *v.* Atkinson, 953
— *v.* Beddard, 64
— *v.* Bennett, 830
— *v.* Brownsmith, 1025
— *v.* Coxwell, 885, 886, 891
— *v.* Darlington, 1566
— *v.* Lady Dunsany, 852, 853, 864
— *v.* Hobday, 1833
— *v.* Hodson, 214, 1872
— *v.* Knubley, 698, 1554
— *v.* Maddison, 1058, 1287, 1291
— *v.* Moore, 803, 806
— *v.* Morley, 1069
— *v.* Mount, 1136
— *v.* Ogle, 847
— *v.* O'Leary, 1157, 1161, 1515
— *v.* Paul, 884
— *v.* Squire, 1946
— *v.* Todd, 1914
— *v.* Townshend, 1306
— *v.* Tucker, 1594
— *v.* Wigg, 1639, 1640
— *v.* Wilson, 735, 1129

Wiltshear *v.* Cottrell, 642
Wiltshire *v.* Rabbits, 693
Wimbles *v.* Pitcher, 985
Winch *v.* Brutton, 1281
— *v.* Winch, 1831
Winchcombe *v.* Bishop of Winchester, 871, 1699
Winchelsea, Lord *v.* Garetty, 1562
— — *v.* Norcliffe, 589, 1381
— — *v.* Wauchope, 80
Winchester's, Marquis of, case, 34
— Bishop of *v.* Knight, 1606
Winchlow *v.* Smith, 842
Winckworth *v.* Winckworth, 1129
Windeatt *v.* Sharland, 386
Windham *v.* Graham, 949
— *v.* Windham, 1156
Wing *v.* Angrave, 1072, 1134
Wingfield *v.* Wingfield, 936, 969, 979, 1077
Wingrove *v.* Thompson, 778, 1880
— *v.* Wingrove, 48
Winn, In the goods of, 157, 158
— *v.* Ingilby, 648
Winsor *v.* Pratt, 129
Winter, In the goods of, 300
— *v.* D'Evreux, 711
— *v.* Easum, 744
— *v.* Innes, 1618, 1623
Wintour *v.* Clifton, 1305
Wise *v.* Metcalfe, 1612
Withers *v.* Bircham, 1775
Withorn *v.* Harris, 980
Withy *v.* Mangles, 361, 374, 984, 985, 988, 1327
Witt *v.* Amis, 687
Witter *v.* Witter, 589
Wollaston *v.* Hakewill, 1635
— *v.* King, 1304, 1307
— *v.* Wollaston, 1906
Wolverhampton Bank *v.* Marston, 801
Wolveridge *v.* Steward, 1632
Wolverton Estates, *Re*, 1012
Wood, *Re*, 939, 1069
— *v.* Cox, 1005
— *v.* Gaynon, 650, 1067
— *v.* Hewett, 640
— *v.* Hitchings, 432
— *v.* Medley, 498
— *v.* Ordish, 1591
— *v.* Penoyre, 1239, 1287, 1288
— *v.* Weightman, 1207, 1822
— *v.* Westall, 1916
— *v.* Wood, 36, 316, 319, 947, 989, 1822
Woodall, *Re*, 779, 1797
Woodbridge *v.* Spooner, 1481
Woodcock *v.* Dorset, Duke of, 1114
— *v.* Hern, 872
— *v.* Renneck, 1080
Woodgate *v.* Field, 1892, 1905, 1908, 1916
— *v.* Unwin, 1828
Woodhead *v.* Turner, 1582
Woodhouse *v.* Balfour, 75, 77
— *v.* Walker, 1606
— *v.* Woodhouse, 1922
Woodhouselee *v.* Dalrymple, 956
Woodley, In the goods of, 67
Woodman *v.* Chapman, 1652
Woodmeston *v.* Walker, 1062
Woodroff *v.* Winkworth, 1382
Woods, In the goods of, 193
— *v.* Huntingford, 1567
— *v.* Woods, 990
Woodward, In the goods of, 121, 122
— *v.* Gouldstone, 136, 295, 318, 319
— *v.* Lord Darcy, 5, 884, 1177, 1181, 1182
Woodyer *v.* Gresham, 758
Wookey *v.* Pole, 1042
Wooldridge *v.* Bishop, 342
Woolley *v.* Clark, 221, 501, 506, 551, 552
— *v.* Green, 404, 446
Woolrich, *Re*, 1077
Wooton *v.* Cooke, 711
Wordsworth *v.* Wood, 1330
Worley *v.* Worley, 1691
Worlidge *v.* Churchill, 1082
Wormald *v.* Muzeen, 1212, 1213
Worman, In the goods of, 55, 348
Wormsley's Estate, *Re*, 1572
Worral *v.* Hand, 1521
Worsley, *v.* Johnson, 982
Worthington *v.* Barlow, 1675, 1676
— *v.* Evans, 1143
Worts *v.* Cubitt, 956, 957
Wotton, In the goods of, 70
Wrangham's Trust, *Re*, 1095
Wray *v.* Field, 1156, 1159
Wren *v.* Kirton, 1721
Wrench *v.* Jutting, 1318
— *v.* Murray, 32
Wrey *v.* Smith, 1247
— *Re*, 1093, 1097, 1099, 1103
Wride *v.* Clarke, 1592
Wright, In the goods of, 70
— *v.* Atkyns, 976, 980
— *v.* Cadogan, 1159
— *v.* Callender, 1213, 1221
— *v.* Lambert, 1246, 1249, 1250
— *v.* Netherwood, 1073
— *v.* Rogers, 78, 92, 428
— *v.* Rose, 604
— *v.* Sanderson, 74, 76, 91
— *v.* Sarmuda, 1073
— *v.* Swindon, Ry. Co., 778
— *v.* Vanderplank, 1922

Wright *v.* Warren, 1303, 1649
— *v.* Weston, 1214, 1224
— *v.* Wilkin, 1125
— *v.* Wright, 74, 588
Wrightson *v.* Calvert, 1018
Wrigley *v.* Sykes, 575, 576
Wrotesley, *v.* Adams, 613
Wroughton *v.* Colquhoun, 1221
Wrout *v.* Dawes, 1781
Wyatt, *Ex parte*, 1898
— In the goods of, 180
— *v.* Hodson, 1839
— *v.* Sharratt, 1884, 1885
Wych *v.* East India Company, 1801
Wyche, *Re*, 1942
Wyckoff, In the goods of, 367, 383
Wykham *v.* Wykham, 934
Wylie *v.* Wylie, 1052
Wynch, *Ex parte*, 967, 971, 972, 973
— *v.* Wynch, 1269, 1291
Wyndham's Trusts, *Re*, 975, 992
— *v.* Way, 625
Wynn *v.* Heveringham, 114
Wynne *v.* Hughes, 1908
— *v.* Wynne, 1123
Wyrall *v.* Hall, 5
Wycherley *v.* Andrews, 279
Wyth *v.* Blackman, 952
Wythe *v.* Henniker, 1563, 1564

Y.

YAITES *v.* Gough, 793
Yalden, *Re*, 1131
Yard *v.* Ellard, 1696, 1697
Yardley *v.* Arnold, 218, 838
Yare *v.* Harrison, 1882
Yates *v.* Compton, 235, 1061
— *v.* Finn, 1745
— *v.* Maddan, 1296
— *v.* Phettiplace, 1118
— *v.* Thompson, 307
Yates *v.* University College, London, 1128
— *v.* Yates, 1062, 1245
Yearworth *v.* Pierce, 643
Yeatman *v.* Yeatman, 1918
Yeats *v.* Yeats, 1017
Yellowly *v.* Gower, 1605
Yeomans *v.* Haynes, 1946
Yockney *v.* Hansard, 1156, 1157
Yonge *v.* Furse, 1570
York, *Re*, 1912
— *v.* Brown, 1761
Young, In the goods of, 455
Young's Settlement, *Re*, 1255
Young *v.* Brown, 429, 430
— *v.* Cawdrey, 1854
— *v.* Cordery, 1854
— *v.* Davies, 1080
— *v.* Dendy, 311
— *v.* Hassard, 1583
— *v.* Holmes, 1228, 1237
— *v.* Hughes, 457
— *v.* Macintosh, 1095
— *v.* Munby, 1613
— *v.* Oxley, 457
— *v.* Pierce, 374, 412
— *v.* Radford, 610
— *v.* Richards, 92
— *v.* Walter, 1893
— *v.* Waterpark, Lord, 1927
Younge *v.* Furse, 1132
Younghusband *v.* Gisborne, 1272
Youngs, *Re*, 1891
Ysted *v.* Stanley, 402

Z.

ZACHARIAS *v.* Collis, 44, 45, 29
Zambaco *v.* Cassavelli, 1909
Zealley *v.* Veryard, 248
Zouch *v.* Lambert, 1347
— *v.* Forse, 601

TABLE OF AMERICAN CASES CITED.

A.

Aaron v. Aaron I-4
Abbey v. Christy I-124
Abbott: Matter of II-317
v. Bradstreet II-348, 534, 537
v. Coburn I-677
v. Curran I-676. III-476
v. James II-289
v. Jenkins II-408
Abel v. Love I-484
Abell v. Abell I-804
Abercrombie v. Abercrombie I-426
v. Sheldon I-625, 628, 632
v. Skinner III-356
v. Stillman I-436
Abernethy v. Catlin II-437, 442
v. O'Reilly III-176
Abingdon v. Tyler II-85
Abraham v. Wilkins I-114, 120, 129, 410
Academy v. Clemens I-307, 315
Acken v. Osborn II-541
Ackerman's Case III-414
Ackerman v. Emott III-417, 419
v. Gorton II-534, 535
v. Hoyt II-534
v. Vreeland II-457, 700
Acklen v. Goodman I-349
Ackless v. Seekright II-517, 546
Acton v. Lloyd II-427
Adair v. Brimmer II-624. III-133, 394, 395
Adams v. Adams II-182, 250, 482, 779, 869, 893, 900. III-202, 313, 507, 653
v. Allen III-581
v. Bass II-313, 827
v. Beekman II-538, 541
v. Brackett III-190, 196, 218
v. Butts II-169. III-478
v. Campbell III-479
v. Chaplin I-134
v. Edwards III-579
v. Field I-95. III-120, 129
v. Gillespie II-510
v. Gleaves II-718. III-397
v. Glidden II-249
v. Hackett I-793
v. Howard III-173
v. Jones II-461, 471, 487
v. Marsteller I-793
v. Smith III-373
v. Spaulding III-415
v. Starke III-208
v. Thomas III-176
v. Van Vleck III-367
v. Ward I-793
v. Westbrook III-177
v. Williams III-566
v. Wiane I-240, 419
Adams Academy v. Adams II-314
Addams v. Hefferman II-754
Addison v. Addison II-670, 792. III-216
v. Boone II-406
v. Bowie II-778
Addition v. Smith III-198
Adee v. Campbell II-912
Aden v. Aden II-890
Adie v. Cromwell II-534, 680
Adkins v. Hutchings III-355
Adkinson v. Breeding II-872, 874
Adler: Matter of II-152
Adlum: Estate of III-136
Adney v. Greatrex II-373
Adsit v. Adsit II-779, 781, 787
Adye v. Smith II-300, 311
Ætna Life Ins. Co. v. Swayze III-361
Afferdbach v. McGovern III-475
Agnew v. Walden II-240
Aguirre v. Packard II-241
Ahearn v. Mann III-423
Aiken v. Bridgeman III-477
v. Coolidge II-248
v. Dunlap II-213
v. Morse II-254. III-169
v. Weckerly I-25, 131
Ainslie v. Radcliff II-212
Akely v. Akely III-362
Akerman v. Moore II-211
Akers v. Akers II-354, 383
v. West II-245
Akin v. Akin II-680
v. Kellogg II-791, 782
Alabama Conference v. Price II-427
Alabama Gold Life Ins. Co. v. Cobb II-23
Alabama State Bank v. Glass III-661
Albee v. Carpenter II-377, 855
v. Vose II-911
Albert v. Albert II-645, 774
Albertson: Matter of III-413
Albrecht: Matter of I-794
v. Pell I-76
Albright v. Albright II-791. III-197
Albro v. Robinson I-630, 642. III-396, 397, 437, 441
Alden v. Johnson I-246
Aldrich v. Annin II-250. III-666
v. Howard III-287
Aldridge v. Aldridge II-790
v. McClelland I-563, 705. II-198. III-373, 416
Ales v. Plant II-235. III-176
Alexander: Est. of II-871
Alexander: Will of I-63, 286
Alexander v. Alexander II-845, 871
v. Alford III-582
v. Bacot III-185
v. Byrd III-204
v. Fox II-800
Alexander v. Kelso I-298, 302. III-361, 580
v. Leakim III-655
v. Powell III-188
v. Rice III-512
v. Stewart I-575
v. Wallace I-798, 805, II-382
v. Waller I-255, 265. II-496. III-215
v. Walsh II-344, 535
v. Williams II-684
Alexander v. Wolfe III-178
v. Worthington I-264. III-217, 654
v. Wriston I-796
Alfred v. Marks II-830
Alger v. Colwell I-626
Ali v. Barnwell Co. II-28, 31
Allaire v. Allaire I-134, 144, 411, 680
Allan v. Gillet III-369
v. Van Meter I-418. II-517, 524, 565
Allegheny Nat. Bk. v. Hays III-193, 202
Allen's Appeal III-318
Allen: Est. of I-714
Allen, Matter of III-438, 439, 443
Allen: Will of I-129
v. Allen I-175, 423, 712. II-169, 170, 171, 643, 867, 889. III-220
v. Ashley III-510
v. Bank III-286
v. Boomer II-775, 783
v. Clarke II-235
v. Claybrook II-352
v. Crosland II-752
v. Edwards II-620
v. Elliott II-240
v. Everett I-95, 111
v. Graffins III-315
v. Griffen I-23, 126, 127, 412
v. Hammer I-86
v. Harlan II-101
v. Harrison I-264
v. Hoyt II-352
v. Jeter I-148
v. Keith II-254
v. Kellam I-573, 574. III-170
v. Kimball I-805
v. Krips III-206
v. Manasse II-871
v. Marble II-390
v. Mayfield II-515
v. Merwin II-610
v. Patton III-192
v. Pray II-864
v. Roundtree III-571
v. Royston III-446, 661
v. Sanders I-643, 644
v. Schriver III-411
v. Smith II-243
v. Stead III-369
v. Tarbell III-183
v. Van Houten III-182
v. Watts I-801, 803
v. Wells III-286
v. Whitaker II-520
v. Wilkins II-75
Allender v. Riston II-136
Allenman v. Manning II-891
Allentown's Appeal II-874, 875
Alley v. Lawrence I-799
Alling v. Chatfield II-779
v. Munson III-362
Allison v. Allison I-119, 120, 199, 826, 827
v. Chaney III-192
v. Kurtz II-506, 823
v. Wilson I-805
Almack v. Horn II-343

Allmon v. Pigg I-55, 58, 63
Allport v. Jerrett III-192, 196
Almy v. Jones II-305, 307, 316, 325, 513
Alpaugh: Will of I-120, 411
Alsobrook v. Alsobrook II-134
Alsop v. Bowers II-676
v. Mather II-113. III-317
v. Russell II-518, 824.
Alston v. Alston III-473
v. Davis II-382
v. Jackson III-474, 560
v. Munford II-718
Alsup v. Banks III-284
Altemus: Case of I-530, 676
Alter v. Kinsworthy II-233, 241
v. O'Brien II-169
Alterange v. Christiansen III-313
Altheimer v. Hunter I-653. III-316
Altman v. Wile II-717
Alvany v. Powell III-3
Alven v. Johnson I-245
Alverson v. Randall II-829
Alvis v. Oglesby III-660
Alvord v. Marsh I-316, 363, 369, 488
Ambleton v. Dyer III-420, 421, 446
Ambree v. Weishaar I-131
American Assoc. v. Lett II-427
American Asylum v. Phoenix Bank II-303
American Baptist &c. Soc. v. Foote III-193
Am. Bib. Soc. v. Am. Col. Soc. II-270
v. Marshall II-287, 306, 321
v. Pratt I-417, 492
v. Price I-410
v. Wetmore I-424. II-306, 321
American Board, Appeal of I-574, 576. II-113
American Board v. Nelson I-238
American Coal Co. v. Clemens III-193, 199
Am. Col. Soc. v. Gartrell II-270
American Dramatic Fund Assoc. v. Lett III-195
American Tract Soc. v. Atwater II-272, 306, 316, 320
Ames: Will of I-425, 428
Ames v. Ames II-238
v. Armstrong I-285, 630. II-152. III-396
v. Downing III-131, 136, 419
v. Jackson III-373, 569, 573
v. Slater I-652. II-225
Amherst Acad. v. Harvard Coll. II-305
Amherst Coll. v. Smith III-200, 221
Amiss v. Williamson I-625
Ammidown v. Kinsey II-159
Amory v. Fellowes I-118
v. Francis III-221
Amoskeag Mfg. Co. v. Barnes III-574, 576, 577
Anderson's Appeal II-694, 781, 783
Anderson v. Anderson III-218, 507
v. Arnold II-28
v. Baker III-362
v. Berry III-437
v. Brown III-511
v. Burwell III-571
v. Butler I-220
v. Dawson III-193
v. Earle III-394
v. Green II-140
v. Irwin I-31
v. Miller III-396
v. Newman III-565
v. Northrop III-659
v. Parsons II-505
v. Piercy II-752, 800. III-360
Anderson v. Potts I-532
v. Smoot II-539
v. Stockdale II-155
v. Thompson III-561
v. Tindale II-254
v. Wilson II-86
v. Wynn III-358
Andreas v. Powell III-206, 565
Andress: Est. of II-874
Andress v. Andress III-437, 440
v. Weller I-47, 418, 423, 491
Andrew v. Hindeman III-511
Andrews v. Andrews II-306, 325, 406
v. Avery I-677
v. Bishop III-188
v. Boyd II-478
v. Brown I-793
v. Brumfield II-461
v. Carr I-706
v. Doolittle III-510
v. Hall II-865
v. Hunneman II-682
v. Rice II-540, 545
v. Sparhawk III-200
v. Tucker II-182. III-511
Andruss v. Doolittle II-182
Anewalt: Appeal of I-804
Annable v. Patch II-352
Annin v. Van Doren I-449, III-507
Ansley v. Baker I-229, 311
Anstice v. Brown II-273
Anthony v. Anthony II-528, 537, 785
Apel v. Kelsey I-677. III-168
App v. Driesbach III-560, 583
Appel v. Byers II-425
Apperson v. Bolton II-779, 784
v. Dowdy I-467
v. Pattison III 577
Apple: Est. of II-676
Appleby v. Brock I-410
Applegate v. Cameron II-872
Appling v. Eades I-207
Apsden v. Nixon III-135
Arbuckle: Est. of II-848
Arcularius v. Geisenhainer I-417
v. Sweet I-674
Arden: Matter of II-827
Arden v. Arden III-659
Argo v. Donover II-171
Arguello: Estate of III-169, 171, 175
Arguello: Matter of III-364
Arhur v. Nelson III-437
Ariail v. Ariail III-661
Arline v. Miller II-112
Armington v. Armington II-912
Armistead v. Armistead I-418
v. Dangerfield II-342
Armour v. Kendall II-621
Armstrong's Appeal II-438. III-216, 219
Armstrong: Estate of III-282
Armstrong: Matter of III-132
Armstrong v. Armstrong I-60, 62, 111, 114, 151, 255. II-510, 558
v. Grandin II-844, 847
v. Griswold II-776
v. Kerns I-76
v. McKelvey III-206, 208
v. Moran II-449
v. O'Brien III-440
v. Park II-793, 795
v. Pratt III-478
v. Stowe I-704
v. Walker III-416
Arndt's Appeal III-179
Arndt v. Arndt I-118
Arnett v. Linney III-417
Arnold v. Arnold I-149, 339. II-344, 351, 484, 535. III-135
v. Barrow II-894
v. Casuer III-653
v. Commonwealth II-235
v. Dean III-196
Arnold v. Gilbert I-800, 802
v. Lanier II-27
v. Sabine I-531-533
v. Smith II-845. III-412
Arrington v. Dortch II-866
v. McLemore I-462
Arrowsmith v. Arrowsmith III-172
Arteburn v. Young I-721
Arundel v. Springer II-24
Artz: exparte II-383
Asay v. Hoover I-9, 103, 104
Asch v. Asch II-785, 805
Ash v. Ash I-245
v. Guie III-579
Ashburn v. Ashburn I-563. III-652
Asher v. Cabell II-31
Ashford v. Ewing III-666
Ashhurst v. Potter III-652
Ashley v. Appellant II-697
v. Barrell III-357
v. Gunton II-240
v. Lamb II-249
Ashlock v. Ashlock II-790
v. Sherman I-449
Ashton: Estate of II-380, 381
Ashton: Matter of II-365
Ashton v. Atlantic Bank II-136
v. Miles II-257
Ashurst v. Field II-481
v. Potter II-851
Ashwell v. Louis I-68
Ashworth v. Ashworth II-491
Asinavi v. Bangs I-206
Askew v. Hudgens III-438
Aspden: Estate of II-348, 384. 385
Atcheson v. McCombs II-680
Atchison v. Lindsay II-926. 927
v. Smith III-505
v. Twine II-31
Atherton v. Corlies II-692, 791. 794
v. Fullam II-238
Atkins v. McCormick I-529, 545
v. Sanger III-582
Atkinson v. Christian I-634
v. Hasty I-534
v. Henry III-172
v. Sutton II-787
Atterberry v. McDuffee III-364
Attorney-General v. Barbour I-693
v. Brigham III-138
v. Garrison II-303, 315
v. Jolley II-304, 312
v. Moore II-303, 314
v. Northumberland II-311
v. Old South Ch. II-303
v. Price II-311
v. Soule II-317
v. Trinity Church II-304, 316
v. Wallace II-304
Atwell v. Helm I-626
Atwood v. Geiger I-9
v. Rhode Island Agricultural Bank III-570
Aubert: Appeal of I-212
Aubert v. Aubert I-673
Aubuchon v. Levy II-24, 799
Auburn Theo. Sem. v. Calhoun I-124
Auch: Succ. of II-316
Auerbach v. Pritchett II-871
Augusta Factory v. Davis II-31
Augusta &c Railroad Co. v. Peacock I-545
Augustus v. Seabolt I-9, 539
Austin: Matter of I-144, 405
Austin v. Bristol II-535
v. Fielder I-102
v. Henshaw II-253
v. Munro III-315, 562
v. Oakes I-211, 253
v. Raiford I-644
v. Saveland II-232, 237, 245
v. Wilson III-377

Autrey v. Autrey II-895
Aveline: Estate of I-636, 638
Avery v. Chappel I-418
v. Everett I-92, 269
v. Miller I-644. III-569
v. Myers III-317
Avery v. Pixley I-107, 194
Ayer v. Ayer II-754
v. Buford III-285
v. Chadwick II-242
Aymer: Matter of II-825
Ayres v. Ayres I-131, 144
Ayres v. Dixon II-25
v. Clinefelter I-331
v. Methodist Ch. II-324
v. Weed I-330, 331, 424. II-305, 306, 321, 424

B.

Babb v. Read II-303
Babbidge v. Vittum II-672
Babbitt v. Babbitt III-377
Babcock v. Booth I-311. II-87. III-130
v. Lillis II-215, 249
Babcock: Matter of II-268. III-364, 366
Bach: Matter of II-140. III-318
Bachelder v. Brown III-578
v. Fisk III-283
Bacon v. Bacon III-138, 412, 442
v. Crandon II-101. III-362
v. Gassett II-619, 891
v. Parker I-298, 306
v. Pomeroy III-318, 319
v. Ransom I-159. II-307
v. Thorp II-253. III-207
Badger v. Badger III-581
v. Daniel II-237, 800. III-207, 208, 375
v. Jones I-649. II-113
v. Kelly II-241
Baer's Appeal III-363
Baer v. Pfaff II-866
Baggen: Estate of III-180
Baggott v. Boulger II-234
Bailey: Matter of II-195
Bailey v. Alleghany National Bank I-800, 801
v. Bailey I-692. II-381, 384, 795, 865. III-191
v. Boyce II 773
v. Boyd II-888
v. Briggs III-506
v. Duncan II-779, 787
v. Galton III-480
v. Hilton I-693
v. Keyes III-581
v. Love II-547
v. Miller I-272, 304, 305
v. Mundin II-850
v. Osborn I-700
v. Patterson II-382
v. Ross III-169, 652
v. Scott I-573, 700
v. Shannonhouse III-575
v. Spofford II-153. III-314
v. Stewart I 693. II-22
v. Wagner II-344
Bain v. Pine II-113
Bainbridge's Appeal II-172, 304
Baines v. Barnes II-866
Bair v. Frischkorn III-579
Baird v. Brooks III-470, 471
Baker: Appeal of I-95, 109
Baker: Matter of I-565. III-443, 447
Baker: Will of I-54, 56, 61, 68
Baker v. Baker II-392, 471, 867
v. Bean II-234
v. Brickell II-184
v. Brown I-160
v. Copenbarger I-800, 801
v. Crandall II-27
v. Dobson I-168
v. Dobyns I-212, 457
v. Fuller III-312, 561, 562
v. Griffitt III-171
v. Johnston III-440. 442
v. Keiser II-740. III-559
v. Lewis I-31
v. Louisville &c. R. R. II-30
v. McLeod II-583
Baker v. Railroad II-34. III-438
v. Red II-779, 780, 781
v. Scott II-354
v. Williams I-897
v. Wimper III-286
Balch v. Hooper I-646, 648, 706. II-160, 161
Baldozier v. Haynes II-790, 794
Baldwin's Appeal III-135
Baldwin: Estate of I-114
Baldwin v. Baldwin I-127, 130. II-302, 305, 322
v. Buford I-561
v. Carter I-886. II-856
v. Dougherty II-246
v. Hatchett II-132
v. Parker I-64
v. Sheldon II-618
v. Shine II-182
v. Spriggs I-241, 244
v. Standish I-626, 631, 633
v. State I-409, 410
v. Tuttle II-235
Baldy's Appeal II-875
Ball v. Deas II-352
v. First Nat. Bank II-50, 182
v. Miller III-175
Ballantyne v. Turner II-424
Ballard v. Ballard II-344, 496, 536
v. Carter I-5, 239, 243
v. Conners II-342, 546
v. Kilpatrick III-665, 666
Ballentine: Estate of II-113
Ballentine v. Wood II-349, 536
Balliet: Appeal of I-242. II-437
Ballinger v. Cureton III-138, 474
Bamforth v. Bamforth I-158. II-540
Bancroft v. Andrews I-544, 573. III-567
v. Bancroft III-216
v. Boston &c. R. R. II-29
v. Ives I-244
v. Otis I-65, 68
Bane v. Gray I-643
v. Wick II-865, 869. III-216
Baniway v. Cobb I-867
Bank v. Alexander III-221
v. Dunbar III-580
v. Howland II-244
v. Hurne III-511
v. Owen III-581
v. Shoemaker III-568
Bank of Brighton v. Russell III-569
Bank of Commerce v. Chambers I-74
Bank of Hamilton v. Dudley III-167
Bank of Louisville v. School Trustees I-546. II-913
Bank of Poughkeepsie v. Hasbrouck III-373
Bank of Sonoma County v. Charles II-239
Bank of South Carolina v. Gibbs II-199
Bank of Troy v. Topping III-315
Banker v. Banker I-22
Bankhead v. Carlisle II-344
v. Hubbard I-626
Banks v. Banks I-201, 675
v. Jones II-353, 536
Banks v. Macker III-354
v. Phelan II-271, 307, 321, 322, 826
v. Sherrod I-17, 675
v. Speey III-472
v. Steele II-215
v. Wilkes III-394
Bannatyne v. Bannatyne I-18
Bannister v. Bull II-360
Banta v. Boyd I-801
v. Moore I-432. 484. III-135, 137
v. Willetts I-67
Bantz v. Bantz III-281
Baptist Assoc. v. Hart II-300
Baptist Church v. Presb'n Church II-303, 305
v. Robbarts I-184
Baptist Convention v. Ladd I-674
Baptist Soc. v. Wilton II-276. 306
Barasien v. Odum 1-299, 311
Barbee v. Barbee II-898. 899
v. Bowen II-251
v. Converse I-701
v. Frazier II-32
v. Green II-169
Barber: Estate of III-423
Barber v. Bennett III-579
v. Bush I-273, 539. II-114
v. Ellis II-866
v. Hite II-864
v. Slade II-73
v. Taylor II-891, 899
Barbour v. Mitchell II-775
Barcalow: Matter of III-447
Barclay: Estate of II-171, 452. 632. III-216, 218, 442
Barclay v. Cooper III-139, 361, 414
v. Kinsey I-676
Barcliffe v. Griscom III-583
Barclift v. Treece I-484
Bard v. Nevin III-287
Bardstown &c. Co. v. Howell II-102
Bardwell v. Bardwell III-188
Barger's Appeal II-479
Barhite's Appeal III-281
Barker: Appeal of I-9, 531
Barker, Ex Parte I-271. 539
Barker v. Belknap III-362
v. Bell I-184, 252, 255
v. McFerran I-675
v. Pearce II-342
v. Smith II-183
v. Stanford I-640
v. Wood II-272, 534
Barkley: Estate of II-676
Barkley v. Donnelly II-274. 301, 313, 314
v. Mahon II-789
Barksdale v. Barksdale I-202
v. Butler I-636
v. Cobb I-632
v. Elam II-572
Barlage v. Detroit &c. R. R. II-23, 24
Barnard v. Bailey II-575
v. Bateman I-366, 367, 369
v. Crossman I-161
v. Fall River Savings Bank II-786
v. Gregory I-305
v. Harrington II-28. III-287

Barnawell v. Smith III-374
Barnes: Estate of II-181
Barnes v. Barnes I-411
v. Blake III-508
v. Danforth II-751
v. Dow II-739
v. Grenzebach II-362
v. Hanks II-604, 609
v. Hazleton II-890
v. Huson II-513
v. Provost II-346
v. Scott II-240. III-583
v. Shannonhouse II-506
v. Snivens I-419
v. Syester I-130
v. Taylor II-139
v. Underwood I-707, 855
Barnet v. Barnet II-829
Barnett: Appeal of I-76. II-500, 670
Barnett v. Barnett I-801. II-793
Barney v Hays I-225
v. Saunders III-363, 417, 419, 446
Barnhizel v. Ferrell II-913
Barnitz: Appeal of II-363. 382
Barnitz v. Casey II-382
v. Reddington I-818
Barnum v. Baltimore II-272, 426 562
v. Barnum II-344, 346, 536, 829
v. Boughton II-869
Barr v. Closterman I-435
Barras v. Barras II-267
Barrett v. Morriss II-899
v. Wright I-418. II-710
Barron v. Barron II-73
v. Burney I-298
v. Vandvert II-85
Barrow v. Barrow II-753. III-660
Barrus v. Boulbac III-511
v. Kirkland II-479
Barruso v. Madan II-562
Barry: Appeal of I-445. II-709
Barry: Estate of II-672, 781. I-804
Barry v. Barry I-86
v. Boyle I-415
v. Briggs I-793
v. Brown I-128, 212
v. Davis III-814
v Lambert II-154. III-366
v. Sterdivant I-256, III-578
Barsalow v. Wright II-248. III-568
Barstow v. Goodwin I-239. II-392
Bartee v. Thompson I-105, 115
Bartholick: Matter of I-60
Bartholomew v. Merriam II-760. III-192. 199
Bartle: Matter of II-537
Bartlett v. Bartlett III-581
v. Fitz II-194. III-414, 444. 447
v. Houdlette II-825
v. Janeway II-75
v. King II-272, 306, 316
v. Nye II-306, 321
v. Slater II-751, 753
Barton: Estate of II-194. III-445
Barton v. Bigelow II-534
v. King II-827
v. Rice II-898
Bash v. Bash III-280
Basket v. Hassell I-897
Baskin's Appeal II-381. 875
Baskin v. Baskin I-120,128. III-364
Bass v. Emery III-131
v. Heard II-211
Bassett v. Granger III-133
v. McKenna II-182. III-511. 578
v. Miller I-793
v. Shepardson I-530. III-578
Batchelder: Matter of II-826
Batchelor: Matter of I-372. 535. 545, 562
Batchelor v. Batchelor I-545. 561
Bate v. Bate III-437
Bates v. Barry II-481. 519
v. Bates I-424. II-303. III-372
Bates v. Dewson II-406
v. Elrod II-247. III-577
v. Gillett II-350, 392, 541
v. Officer II-281
v. Underhill III-394
v. Vary III-445
v. Webb II-588
v. Woodruff I-797
Batione: Estate of II-795
Batson v. Murrell III-874
Battle v. Duncan III-179
v. Speight I-5, 255, 265
Batton v. Allen II-892, 894
Baucus v. Barr III-133
v. Stover II-625, 874. III-133, 355, 439, 570
Baugarth v. Miller I-462
Baugh v. Barret III-131
Baugher v. Wilkins III-562, 585
Baumgartner v. Haas I-307, 315
Bauskett v. Keitt I-457, 458, 459
Bautz v. Bautz II-171, 198
Baxley: Estate of I-504
Baxter v. Abbott I-22, 407
v. Baxter II-199. III-509
v. Buck II-22
v. Davis I-722
v. Penniman III-576
Bay v. Cook II-894
Bayard v. Farmers &c. Bank II-132
Bayeaux v. Bayeaux I-282
Bayle: Matter of II-213
Bayless v. Powers III-567
Bayly: Succession of III-133
Bayner v. Robertson I-319
Beacroft v. Strawn II-354
Beach v. Cummins III-582
v. Norton III-284, 506
Beadle v. Beadle I-798, 799. II-774
v. Graham III-590
v. Steele II-268. III-175. 184
Beal v. Crofton II-755
v. State III-579
Beale v. Blake II-438, 636
v Cunningham I-7, 141. 142
v. Miller II-780
Beall v. Deale II-559
v. Drane II-302, 315
v. Fox II-285, 300, 306
v. Mann I-58, 60, 68, 164
v. New Mexico I-647. II-159
v. Schley II-774
Beam v. Copeland I-678, 679
v. Jennings I-799
v. Bumpass I-484
Beaman v. Elliott III-515
Beame v. Yerby I-126
Bean v. Baker III-207
v. Farnam III-362
Beard v. Beard III-443
v. Rowan II-273
Beardslee v. Reeves I-545
Beardsley v. American Missry. Soc. II-427
v. Bridgeport II-274, 303, 318
v. Marsteller III-375
Beasley v. Jenkins II-344
v. Waugh III-564
Beaston v. Farmers Bank II-213
Beaton v. Wade III-286
Beatty v. Clark III-442
v. Cory Universalist Soc. II-382. 424
v. Lalor II-472
v. Montgomery II-515, 534, 588
v. Tete III-576
Beaubien v. Cicotte I-24, 25. 409
Beauchamp : Will of I-193
Beaver v. Filson II-303, 306, 312
Beavers v. Winn II-865
Beavis : Estate of II-874
Bechtold v. Read II-139. 183. III-395, 412. 419, 651
Beck : Estate of III-438, 440
Beck v. McGillis II-472, 476, 633
Beck v. Montgomery II-589
Beckam v. DeSaussure II-388
Becker : Matter of I-709
Becker v. Lawton I-713
v. Walworth I-817. III-339
Beckett : Will of I-125, 128
Beckett v. Selover I-545
v. Zane I-450
Beckley v. Leffingwell II-345. 541
Beckman v. Ga. P. R. R. II-29
Beckwith v. Butler II-900
Becraft v. Lewis I-535
Bedell's Appeal III-439
Bedell : Matter of I-120
Bedell v. Guyon II-524 534, 535
Bedford : Succession of I-712
Bedinger v. Wharton III-359
Beebe v. Estabrook II-891. 892
v. McKenzie I-153
Beech : Estate of II-536, 539
Beecher : Matter of III-421
Beecher v. Barker III-131
v. Buckingham II-136, 152
Beekman v. Bonsor I-336. II-313, 319, 323, 324
Beeks v. Odorn I-386
Beem v. Kimberly II-591, 776
Beene v. Collenberger II-137
Beers : Ex parte I-127
Beers v. Shannon I-484. III-475. 480
v. Strohecker III-505
Beeson v. Beeson I-277. II-754
v. Breading II-497
Begole v. Hazzard III-561
Behrens v. Behrens I-187, 457
Behrle v. Sherman I-647
Beirne v. Beirne I-73. II-479. III-509
Belcher v. Belcher I-797
v. Branch I-564. III-415
Belden v. Meeker I-676
Belding v. Black Hills, &c. R. R. II-29, 31
Belknap v. Belknap II-739
Bell v. Alexander II-304
v. Andrews II-254
v. Arndt I-637
v Bell I-804. II-73.
v. Briggs II-171
v. Falson III-506
v. Farmers' National Bank II-138
v. Hall II-871
v. Hewitt I-178. III-200
v. King III-465
v. Newman III-286
v. People I-640
v. Schwartz I-795
v. Smalley II-431
v. Speight II-112
v. Warn II-575
v. Welch III-313
Bellamy v. Bellamy III-419
Bell County v. Alexander II-816, 564
Bellerjeau v. Kotts III-394
Bellinger v. Ford I-498
Bellows v. Sowles I-56, 397. III-420
Belote v. O'Brien III-581
Belt v. Belt I-184, 417
Belton v. Summer I-675
Beltzhoover v. Costen II-563
Belvin v. French III-372, 562
Bemis v. Bemis II-237. III-570
v. Stearnes II-892
Benagh v. Turrentine III-418
Bendall v. Bendall II-826
Bender's Appeal II-823
Bender v. Bean III-168
Benedict : Matter of II-286. III-316
Benedict v. Bonnet III-175
v. Chase II-227

Benedict v. Webb III-372
Benham v. Hendrickson III-507
Beniteau v. Dodsley III-169, 176
Benjamin v. De Groot III-564, 566
v. Dimmick II-642 643, 897
v. Larouche II-872
v. Taylor III-560. 563
Benner v. Alexander III-586
Bennett : Estate of II-846
Bennett v. Akin III-199
v. Camp I-676
v. Cane II-364
v. Crain III-666
v. Dawson II-238, 246
v. Graham I-636
v. Hester II-565
v. Hoffman III-319
v. Hutchinson I-86
v. Ives I-298, 305. II-172
v. Kiber I-334
v. Overing I-641
v. Pierce III-362
v. Robinson II-588
v. Rosenthal I-224
v. Russell I-641, 650
v. Strong II-564
v. Toler II-365
v. Woodman I-646
v. Woolfolk III-296
Benoist v. Murrin I-34
Benson : Matter of II-792
Benson v. Benson II-826
v. Linthicum II-383
v. Wolf I-593. III-561
v. Wright II-342
Bent : Appeal of I-674
Bent v. Bent I-886
Bentley : Estate of I-5[illegible]
Bentley v. Bentley III-583
v. Kauffman II-479
v. Long II-344
v. Shreve III-413
Benton v. Benton II-479
Berand : Succession of I-534
Berg v Radcliff III-196
Berger v. Duff II-133
Berkey v. Judd I-628
Bermingham v. Forsyth II-800
Bernard v. Willcox I-793
Bernes v. Weisser II-213
Berney: Estate of I-708
Bernheimer v. Calhoun II-250
Berrien: Estate of III-361
Berrigan v. Pearsall II-235
Berry: Estate of III-360
Berry v. Bellows I-703. 708
v. Folkes III-318
v. Graddy II-268
v. Parkes III-362
v. State I-410
v. Stevens III-582
Berryhill: Estate of III-412
Bertles v. Noonan I-794
Berwick v. Halsey III-417
Besaucon v. Brownson I-711
Bescher v. State II-760
Bess v. Bess III 660
Besson v. Cox III-580
Bethell v. Moore I-184, 202
Bethlehem v. Perseverance Co. II-300. 307
Betsinger v. Chapman III-471
Betts v. Betts I-802, 804. II-482, 792. III-437, 438, 440, 441, 445
v. Jackson I-207
v. Van Dyke II-799
Bevan v. Atlanta Natl. Bank III-580
v. Cooper III-185, 194, 655
Beverly v. Rhodes III-653
Beverleys v. Miller III-416
Bevers v. Park III-176
Bewley: Estate of III-443
Blays v. Roberts III-559, 572, 660
Bibb v. Avery I-354
v. Hunter III-580
Bib. Soc. v. Pendleton II-271, 302
Biddison v. Mosely I-709
v. Story I-713
Biddle: Appeal of I-158. II-377, 585, 664. III-413
Biddle v. Carraway III-216, 217
v. Hoyt II-344
v. Wendell I-652
v. Wilkins III-476
Bidwell v. King III-665
Bieber: Appeal of I-529, 539. 711
Biedler v. Biedler II-606
Bierbaum: Matter of I-564
Bierce v. Bierce III-197
Bigelow v. Folger III-476, 477
v. Gillott I-162, 183. II-829
v. Morong II-388, 912
v. Paton III-130
v. Poole II-897
Biggs v. Angus I-206
v. McCarty II-352
Bigley v. Lonvey I-153
Bijur v. Bijur I-797
Biles v. Biles I-157
Billing: Appeal of I-11, 25, 397
Billing: Estate of I-147. 159
Billingslea v. Glenn III-419
v. Moore I-417. II-424. 595
Billingsley v. Harris II-510
v. Tongue II-513
Billington's Appeal III-418
Bills v. Putman II-632
v. Scott I-634. 705
Bindley's Appeal III-170
Bindon: Will of I-24
Bingaman v. Robertson III-576
Bingham: Matter of I-903. III-170, 175, 190, 195, 203, 217, 283, 667
Bingham v. Jones I-565
v. Marine Bank III-475
Binnerman v. Weaver I-273. 539, 588
Birchard v. Scott II-304. 315. 322, 323
Bird: Estate of II-643
Bird v. Bird III-665
v Graham III-572
v. Key III-171
v. Pope I-178
v. Wiggins I-625, 626
Birdsall v. Hewlett II-496, 497. 535, 544, 547, 555, 558, 560. 757. III-201
Birkholm v. Wardell II-171. III-186
Birmingham v. Lesan II-564, 566
Bishop v. Bishop I-286, 866. II-512
v. Curpley III-139
v. Davenport II-900
v. Dillard III-563
v. Hendrick II-776
v. Howarth III-189, 202
v. Latourette I-353, 484
v. McClelland II-478
Bissell v. Durfee I-633
Bitner v. Bitner I-42
Bitzer v. Hahn II-756. III-415
Bizzell v. Stone III-477
Black: Estate of II-844, 847
Black: Matter of II-194. III-366
Black v. Campbell II-389
v. Dressell III-183
v. Ellis I-126
v. Foljambe I-55
v. Hurlbut III-363
v. Richards I-175
v. Shreve II-584. III-512
v. Whitall II-181, 890, 899. III-412, 656
Blackburn v. Cranfords I-405
v. Crawford I-677
Blacker v. Booth II-618
Blackinton v. Blackinton II-864
Blacklaws v. Milne II-888
Blackler v. Boott III-558, 563, 577
Blackman v. Wadsworth II-512
Blackmore v. Kent I-652
Blackstock v. Mitchell I-153
Blackstone v. Blackstone II-488, 442, 636
Blackstone Bk. v. Davis II-574. 576
Blackwell v. Blackwell III-395, 419, 424
Blaen Avon Coal Co. v. McCulloh I-377
Blagge v. Miles I-244
Blair v. Howell II-888
v. Johnson III-508
v. Murphree I-843
v. Snodgrass II-382
v. Wood III-476
Blake: Estate of III-193, 202
Blake v. Barnes III-471
v. Blake II-912. III-442. 511
v. Dexter I-564
v. Hawkins I-312
v. Pegram II-195. III-443, 444
v. Rourke I-47. 55
v. Sanborn I-794
Blakely: Will of I-23, 31
Blakely v. Blakely I-62
v. Carter II-847. III-420
v. Frazier I-278. III-581
Blakemore v. Kimmons I-564, 565
Blakeney: Matter of II-183. III-438, 441
Blancan: Matter of I-278, 279, 280, 282
Blanchard v. Blanchard I-179. II-535
v. Chapman I-158
v. Maynard II-545
v. Nestle I-24, 46, 56
v. Sheldon I-897
v. Williamson II-234. III-423
Blanck: Estate of I-586
Bland v. Bland II-383
v. Bowie III-177
v. Freeman II-139
v. Muncaster II-138
v. Stewart III-660
v. Umstead III-284
Blandin v. Blandin I-242
Blaney: Estate of II-788
Blaney v. Blaney I-264, 453, 828. III-218
Blank: Matter of I-536, 563
Blankenbaker v. Bank II-212
Blanton v. Mayes I-798
Blassingame v. Rose II-866
Blatchford v. Newberry II-795
Blauvelt: Matter of III-369, 393, 442
Blauvelt v. Ackerman III-419, 446
v. DeNoyelles II-754. III-201
v. Van Winkle III-201
Bledsoe v. Beller II-845
Bleecker v. Lynch I-25, 45
Bleight v. Manufacturers Bank I-804
Blenon: Estate of II-303
Blight v. Blight II-49
Bliss v. Amer. Bible Soc. II-306,322
v. Lee II-252. III-375
v. Whitney I-867
Bliven v. Seymour I-155. II-441, 661, 664
Blizzard v. Filler II-160
Block v. Block I-242
Blodgett: Estate of I-299,308
Blodgett v. Moore I-237
v. Perry II-25
Blondeau v. Sheridan III-584
Blood: Will of II-432

Blood v. Kane III-563
Bloodgood v. Bruen III-139, 204
Bloodworth v. Stevens II-50
Bloom v. Cate III-176
Bloomer v. Bloomer I-773, 774, 897
Bloomfield v. Ash I-632. III-561
Bloor v. Myerscaugh I-612
Blossom v. Sidway II-395
Blouin v. Phaneuf II-829
Blount v. Moore I-797
v. Pritchard III-174, 176
Blow: Matter of II-51. III-420
Bloxham v. Crane I-796
Bluett v. Nicholson II-847
Blume v. Hartman I-413, 414
Blunt v. Gee II-789
Board of Education v. Edson II-313
Board of Missions Appeal II-828
Board of Missions v. Scovell II-427
Boardman v. Boardman II-441, 578
v. Woodhouse I-41
Bobb: Succession of I-211
Bobbitt v. Jones III-660
Bobo v. Valden I-634. II-850
Bockover v. Ayres III-179
Bodenheimer: Succession of I-625, 628, 705. III-441
Bodle v. Hulse I-336. III-473
Bodley v. McKinney II-155
Bodman v. American Tract Soc. II-427, 428
Boeger v. Langenberg I-363 II-138
Boerum v. Schenck II-140
Bogan v. Camp II-134
v. Hamilton III-513
Bogardus v. Clark I-674
Bogart: Matter of I-129, 144. II-620, 621
Bogart v. Van Velsor III-368
Bogert Re I-134, 144
Bogert v. Furnan I-819. II-511, 911
v. Hertell I-797, 802, 806. II-153
v. Indianapolis II-28
Boggs v. Bard II-85
v. Taylor II-491
Bogle v. Nolan II-183
Bogle v. Kreitzer III-562
Bogram v. Hamilton II-461
Bogue v. Watrous I-308
Bogy v. Roberts II-893
Bohannon v. Madison II-138
Bohde v. Bruner II-194. III-363, 365
Bohler v. Tappan I-793
Bohon v. Barrett III-376
Boidry v. Parris I-131, 132
Bolin v. Barker II-781
Boling v. McClelland II-460
Bolles v. Bacon III-361
v. Bolles I-693. III-657
v. Smith II-505, 507, 824
Bolling v. Bolling II-784
Bollinger v. Manning II-231, 239, 240
Bolman v. Overall I-178
Bolton v. Stretch I-799
Bomar v. Ezell I-648
Bomash v. Iron Hall II-23
Bomgaux v. Bevan II-213
Bonaparte v. State II-235
Bonard: Will of I-210, 211, 806. II-270
Bond's Appeal II-382
Bond v. Halloway II-159
v. McNiff II-779, 787, 823
Bonham v. Bonham II-442, 457, 661, 693, 750
Boniface v. Scott II-215
Bonnell v. Bonnell I-799. III-509
Bonnell v. Holt I-225
Bonner v. Young II-560, 678. III-571
Bonnet: Matter of II-826, 827
Bonslough v. Bonslough III-510
Bouse: Will of I-54, 119
Book v. Book I-174
Booker v. Armstrong I-575. III-354
Bool v. Mix II-358
Boomar v. Hagler III-176
Boon v. Chapman I-484
Boone v. Boone II-778
v. Citizen's Savings Bank III-138
v. Dykes II-538
v. Lewis I-95, 108
v. Tipton II-565, 584
Boor v. Lowrey III-287
Booth: Matter of I-120
Booth v. Ammerman II-480, 756
v. Baptist Church II-270, 437, 572, 827, 830
v. Kitchen I-55, 57, 60, 63, 674, 692, 693. III-666
v. Northrup II-101
v. Patrick II-182
v. Radford II-169
Boothe: Matter of III-442
Boothby v. Boothby II-237
Booyer v. Hodges III-420
Borden v. Borden I-239
v Jenks II-670, 785. III-216
Border v. People I-641
Borer v. Chapman III-565
Borford Religious Soc. v. Harriman II-304
Borland: Estate of I-712
v. Nichols II-864
Born v. Horstman II-588
Bornford v. Grimes II-196
Borroughs v. Adams II-888
Bosis: Estate of III-371
Bosley v. Bosley I-229, 239, 240
Bost v. Bost I-411
Bostick v. Blades II-588
Boston Beef Packing Co. v. Stevens III-372
Boston Franklinite Co. v. Condit II-154, 823
v. Murray II-251
Boston Safe Deposit Trust Co. v. Plummer II-441, 452, 672
Bostwick: Matter of II-720
Bostwick v. Skinner III-174
Bothwell v. Dobbs III-58
Bott v. Barr II-312, 563
Bottorff v. Covert III-174
Botts v. Fitzpatrick III-584
Boudinot v. Bradford I-174, 179
Boughton v. Bradley I-484
v. Flint II-611. III, 421, 569
Bouleware v. Hendricks II-161
Boulton v. Scott I-575, 675. III-657
Boumfield v. Drook II-382
Bourke v. Wilson I-126
Bourne v. Mehan III-415
v. Stevenson I-640, II-182
Boutiller v. Steamboat Milwaukee II-31
Boutti: Succession of I-644
Bowden v. Pierce I-299, 335
v. Walker II-566
Bowditch v. Andrews II-344, 346, 406, 536
v. Ayrault II-545, 822
v. Soltyk II-732, 759
Bowdoin v. Holland I-612
Bowen v. Bowen II-776. III-580
v. Dorrance II-676
v. Evans II-226, 620
v. Goranflo I-404
v. Hoxie I-237, 245
Bowen v. Johnson I-711
v. Montgomery III-357
v. Payton II-479
v. Richardson III-397
v. Shay II-133
v. Shandler II-783
Bower: Estate of II-344
Bowers v. Black III-173
v. Bowers I-237, 323. II-353
v. Hammond II-226
v. Keesecker II-25
v. Porter II-382, 514, 537
v. Smith III-507
v. Williams II-197. III-373
Bowerson: Appeal of I-531, 540
Bowie v. Bowie I-529. III-582
v. Ghiselin II-250
Bowker v. Bowker II-545
v. Pierce III-367, 437
Bowlby v. Thunder I-140, 156
Bowles v. Drayton III-415
v. Winchester II-895
Bowley v. Lamont I 9
Bowling v. Dobyns II-534, 536
Bowman's Appeal I-326, 331. II-517, 757
Bowman v. Carr III-134
v. Floyd I-793
v. Long II-516, 517, 546, 562, 565, 566
v. Rainetaux I-797
v. Wooton I-624, 626
Bowne v. Underhill II-363
Boxwell v. Affleck II-314
Boyce v. Christian II-361
v. Grundy III-586
v. St. Louis II-271, 275
v. Wabash RR II-29
Boyd: Appeal of I-531
Boyd: Matter of II-52
v. Boyd I-68, 630. III-326
v. Collins II-235
v. Conshohocken Worsted Mills III-579
v. Cook I-189
v. Dennis II-706
v. Eby I-26, 34, 41
v. Flournoy II-209
v. Lowry III-564
v. Murray III-652
v. Townes III-359
v. White II-865, 890, 900
Boyden v. Ward II-874, III-557
Boyer v. Francis III-566
v. Frick I-169
Boykin v. Boykin II-443, 632, 670. III-195
v. Cook III-584, 585, 586
Boylan v. Boylan II-369
v. Meeker I-49, 179, 184, 190, 425
Boyle: Matter of III-585
Boyle v. Overby III-287
v. St. John I-636
Boynton v. Dyer III-414
v. Laddy II-194. III-202
v. Peterborough, &c., R. R. II-34
v. Sandford III-574
Bozeman v. Bozeman III-177
Brabham v. Crosland III-359
Brace v. Black I-41
Brackenridge v. Holland II-139
Brackett v. Tillotson II-172. III-372
Braden v. Cannon II-382
v. Hollingsworth III-585
Bradford v. Boudinot I-721
v. Bradford II-585
v. Brinley II-441
v. Forbes III-139, 509
v. Haynes II-453
v. Kent II-781, 782
v. Mogk I-799. III-201
Bradford Academy v. Grover II 757

Bradhurst v. Field III-507
Bradish v. McClellan I-235
Bradlee v. Andrews I-229, 406
Bradley: Estate of II-171, 195. III-446
Bradley: Matter of I-575. II-195. III-367
Bradley v. Bradley I-244, 418, 420, 532, 563
v. Commonwealth I-303, 632
v. Harden I-703
v. Hunt I-897
v. Love I-483
v. Rees II-434
v. Vail II-248. III-568
Bradner v. Faulkner II-752
Bradshaw v. Combs III-580
v. Simpson II-132, 134, 136
Bradsher v. Cannady II-895
Bradstreet v. Butterfield I-676
v. Clark II-559
v. Kinsella I-81
Bradway v. Holmes II-159. III-184
Brady v. McCrosson I-6, 95, 108, 128, 137, 138
v. Pryor II-849
Bragaw v. Bolles III-196
Bragg v. Stanford II-898
Brainard v. Cowdrey II-438, 442. III-216
v. Darling II-610
Bramhall v. Ferris I-800
Bramley v. Forman I-650
Branch v. Branch II-27
v. Griffin II-346
Branch Bank v. Donelson II-245
v. Hawkins II-246
v. Rhew II-242
Brandenburg v. Thorndyke II-829
Brandon v. Brandon III-191, 198
v. Hoggatt II-195. III-416, 445
v. Judah III-355
v. Mason I-638
v. Phelps III-205
v. Rowe III-358
Brands v. Hartung II-829. III-185
Brange v. Lucy III-208
Branger v. Lacy III-580
Branham v. Commonwealth II-196
Brannoch v. Stocker II-700. III-359
Brant: Will of III-190, 217, 219
Brant v. Abbott III-367
v. Wilson I-174
Brasfield v. French III-318
Brasher v. Marsh I-156, 502
Brattle v. Converse I-574
v. Gustin I-574
Brawford v. Wolfe II-864
Brawley v. Brawley I-652
v. Collins II-460
Braxton v. State III-396
Bray v. Adams III-177
v. Dudgeon I-530
v. Neill II-791. III-172, 174, 177, 183
Braydon v. Harmon III-475
Brazeale v. Brazeale III-355
Brazel v. Fair III-205
Brazer v Clark I-630. III-396
v. Dean II-867
Brearfield Iron Works Co. v. Foster I-612
Brearley v. Brearley I-417, 803. II-710. III-204
Brearly v. Cox I-867
Breathitt v. Whitaker I-10
Breckinridge's Appeal III-375
Bree v. Bree III-176
Breed v. Pratt I-67, 163
Breen v. Pangborn I-529
Breese v. Stiles I-242
Bregaw v. Claw III-658
Breining v. Schneider II-852
Brenham v. Story III-168
Brennan: Estate of II-243, 246
v. Lane II-152. III-315
v. Michigan Central Railroad III-578
v. Pardridge I-317
v. Whittaker I-867
Brenner v. Alexander III-505
v. Gauch II-875
Brent v. Bank of Washington II-214
v. Clevinger III-367
v. Washington II-344, 411, 540
Bretz v. Matney II-789
Brewer v. Barrett I-398
v. Blougher II-913
v. Conover II-24. III-473
Brewis v. Lawson III-208
Brewster: Matter of II-692
Brewster v. Brewster III-577
v. Demarest III-365, 366, 421, 446
v. Gillison III-207
v. Kendrick II-234. III-219
v. McCall I-264, 265. II-321, 427, 827
v. McCall's Devisees I-5, 94, 424
Brewton v. Brewton II-889
Briarfield Iron Works v. Foster III-506. 652
Brice v. Miller III 581
v. Taylor I-576
Brick: Estate of I-702, 713
Brick v. Brick I-34, 42, 67, 134
Bricker v. Lightner I-410
Bridge v. Swain III-174. 175
Bridgers v. Hutchins II-891
Bridges v. Pleasants II-319, 324
Bridgewater v. Gordon II-344, 515, 535
Bridgforth v. Payne III-572
Bridgman v. Bridgman I-544
Bridwell v. Swank I-68
Brienly: Estate of III-396
Briggs v. Carroll III-193
v. Greene II-913
v. Hosford II-453, 460, 791
v. McCarty II-342
v. Thomas II-246
v. Wade II-886
Brigham v. Elwell III-182
v. Shattuck I-5. II-564, 572
v. Winchester I-243
Bright's Appeal II-675
Bright v. Moore III-566
Brighton v. Russell II-103
Brightwell v. Jordan III-313
Brill v. Ide II-232, 245
vWright III-194
Brimblecorn v. Haven II-480
Brimmer v. Sohier I-255
Brinckerhoff v. Remsen I-411
Brine v. Insurance Co. I-679
Brink v. Layton I-801, 802. II-793
v. Masterson I-803. III-196
Brinkerhoff v. Merselis II-757
Brinkman v. Rueggersick I-24, 48, 57, 69
Brinley v. Grou II-481
Brinn v. Imboden II-241
Brinson: Matter of I-705
Brinton: Estate of III-445
Briscoe v. McGee II-823
v. Tarkington I-538
v. Wickliffe I-325, 563. II-521
Brist v. Dawes II-534, 541, 782
Bristed v. Weeks I-21, 69
Bristol v. Atwater II-541
v. Bristol II-319
v. Ontario Orphan Asylum II-426
Bristol Co. Savings Bank v. Woodward III-221
Britt v. Smith II-700
Brittain v. Dickson I-576
Brittin v. Phillips II-564, 566
Britton v. Miller II-342
Broach v. Sing I-168
Broad: Estate of II-559
Brock's administrator v. Frank I-363, 392
Brock v. Frank I-565, 675, 681
v. Sawyer II-752, 760
Brockenbrough v. Turner II-135, 137. III-377
Brockett v. Brush III-862
Brockman v. McDonald III-562
Broderick: Will of I-677, 693
Broderick v. Broderick III-192
Brodie v. Bickley III-515
Brodribb v. Tibbits I-676
Broe v. Boyle I-675
Brokaw v. Brokaw II-792
v. Decker III-480
v. Hudson II-411, 618, 619
v. McDougall II-793
v. Peterson I-417, 418. II-359
Brolasky v. Galley I-800
Brome v. Pembroke I-423
Bronson: Will of I-278, 286
Bronson v. Strouse II-304, 314
Brook v. Chappell I-543
v. Whitmore I-634
Brooke v Croxton II-508
v. Townsend I-410
Brookfield v. Allen II-398, 399
Brookie v. Partwood I-54
Brooking v. Farmer's Bank III-375
Brooks: Estate of I-409. II 566
Brooks: Matter of I-794. II-22, 169, 517, 670. III-130, 132
Brooks v. Barrett I-22
v. Bicknell II-53
v. Brooks II-182, 267, 701, 706. III-447, 569
v. Cook II-848
v. Dent III-220
v. Eskins III-200
v. Goss III-581
v. Headin II-249
v. Hope III-133
v. Jackson I-637. II-52. III-197
v. Lynde II-691. III-559, 565, 572
v. Mastin II-85, 159
v. Northey II-101
v. Rayner III-206
v. Whitmore I-635
Brophy: estate of II-181
Brose: Estate of III 282
Brothers v. Cartwright I-800, 803
v. McCurdy II-575
Brotten v. Bateman III-394
Brotaman: Estate of III-191
Broughton v. Bradley I-676, 707
Browder v. Faulkner III-559
Brower v. Brower II-373
Brown's Appeal III-316, 317
Brown's Case III-396
Brown: Estate of I-539. III-395
Brown: Ex parte I-562. II-481
Brown: Matter of I-398, 425, 452. II-249, 281, 541. III-412
Brown: Will of I-194
Brown v. Anderson III-576
v. Bapt. Soc. II-305
v. Beaver I-148
v. Bell III-578
v. Benight I-308
v. Bokee II-75
v. Brown I-239, 417, 797. II-242, 510, 517, 650, 670, 775, 787, 889, 912. III-198, 515
v. Burke II-892, 897
v. Caldwell II-304, 779, 788
v. Carey III-579
v Chesterman III-368
v. Cleveland I-254
v. Concord II. 306, 558, 560
v. Corey I-450
v. Critchell II-855, 884

Brown v. Davenport I-628
v. Dean III-287
v. Dortch II-646
v. Durbin I-298, 302
v. Dysinger I-421. II-460
v. Eggleston II-194. III-318
v. Evans III-314
v. Fessenden III-420
v. Fisher I-19
v. Forscher II-234, 846
v. French III-370
v. Frost III-314
v. Hanauer III-169, 171, 567
v. Harmon II-384
v. Harris I-394
v. Hemphill II-866
v. Hodgdon II-781, 794, 867
v. Hunt II-795
v. Jacobs I-637
v. James III-217, 219
v. Joiner II-869
v. Kelsey II-306, 316, 822
v. Knapp II-752. III-191, 202
v. Landon I-676
v. Lawrence II-348, 534
v. Leavitt I-312. 318
v. Lewis III-479
v. McAllister I-120, 126
v. McDonald III-283
v. McKee I-636. III-583
v. Marshall III-579
v. Miner I-709
v. Mitchell I-65. III-580
v. Murdock I-634
v. Nourse III-480
v. Pancoast II-305, 325, 431
v. Pendergast I-721. II-113
v. Perris I-818
v. Phelps III-558
v. Pitney II-785
v. Porter II-236, 243
v. Prigden I-86, 118, 795
v. Public Administrator II-212, 213
v. Ricketts III-416
v. Riggin I-48
v. Ryder I-598
v. San Francisco Gas Light Co. I-436
v. Slaman I-795
v. Severson II-589
v. Shand I-9
v. Stark I-352
v. Stats I-635
v. Strickland I-702, 703. II-23
v. Summer II-251
v. Sumner III-557
v. Supreme Council II-22
v. Taney I-23
v. Taylor II-892
v. Thompkins II-270, 271, 301
v. Thorndike I-184, 201, 239
v. Walker III-377
v. Walter II-872
v. Ward I-47. II-775
v. Weatherby I-632, 650
v. Weaver II-140
v. Whitmore III-179, 584
v. Williams II-501, 541
v. Woody III-176
Browne v. Bedford II-867. III-317
v. Cogswell II-465
v. Doolittle II-845
v. Lange II-249
v. Molliston I-22
v. Van Hook III-374
Brownell: Matter of II-755
Brownell v. Williams II-247
Browner v. Sterdevant II-26
Brownfield v. Brownfield II-776
v Wilson I-417
Brownlee v. Lockwood I-576. II-113, 159. III-137, 561
Brownson v. Gifford II-585
Brubaker: Appeal of I-483, 533
Brubaker v. Jones I-483
Bruce v. Bissell II-547
v. Bruce III-440
v. Griscom II-894
Bruden: Estate of I-210
Bruere v. Gulick III-443
Brundage v. Brundage II-50, 467
Brundige v. Rutherford I-35
Bruner v. Meigs III-372
Brunn v. Shuett II-620
v. Vaughan I-796
Brunson v. Brunson II-865
v. King I-9, 157
Brush v. Brush I-242
v. Button III-665
v. Young I-564
Brusnahan v. Manhattan Coll. II-286
Bryan's Appeal III-202
Bryan v. McGee III-137, 656
v. Moring I-386
v. Mulligan II-133
v. Mundy II-232. III-568
v. Rooks II-856
v. Stewart II-154
v. Thompson II-153
v. Walton II-392
Bryant v. Craig III-417
v. Helton I-302
v. Hilton II-850
v. Livermore III-307
v. McCune II-872
v. Owen I-653
v. Thompson II-586
v. Tracy II-586
Buchan v. Rintoul II-384. III-397
Buchanan v. Buchanan III-576
v. Mattock I-458
v. Turner I-74, 76
v. Wagnon II-215
Bucher v. Bucher III-183, 197
Buchler v. Buffington I-677
Buchoz v. Pray II-250
Buck v. Haynes III-578
v. Johnson I-429, 430. II-102
v. Paine II-385, 562
v. Rich III-582
Buckingham v. Wesson III-578
Buckland v. Gallup II-85. III-475
Buckles v. Lafferty II-139
Buckley v. Buckley I-703. III-138, 190, 193
v. Gerard I-242, 244, 420, 426. II-491
v. McGuire I-638
v. Reed II-517, 518, 348, 501, 537
Bucklin v. Bucklin I-796
v. Chapin II-248. III-362
v. Ford III-479
Buckminster v. Perry I-407
Bucknor: Estate of II-849
Budd v. Brooke I-680
v. Garrison II-752
v. Hiler I-843. III-422
Budlong: Matter of I-405
Budlong: Will of I-64
Budlong v. Clemens II-195. III-313
Buehler: Appeal I-258
Buel's appeal III-167, 173, 175
Buel v. Dickey I-626, 629, 646, 649
Buffaloe v. Baugh II-680
Bufford v. Holliman II-534
Buffum v. Sparhawk II-867
Buie v. Buie III-573, 579
v. Pollock III-652
Bujac's Appeal II-510
Bulfer v. Willigrod II-790
Bulfinch v. Benner 11-253
Bulkeley v Noble II-896, 897
Bulkley v. Andrews I-676. III-480
v. Redmond I-207, 546
Bulkley v. Staats III-668
Bull: Matter of II-194
Bull v. Bull I-157. II-317, 344, 421
v. Coe II-233, 234
v. Harris III-584
Bullard v. Benson II-836. III-412
v. Bullard II-647
v. Chandler II-318
v. Gaffe II-461
v. Moor II-237. III-287
v. Shirley II-276. 572
Bullock: Matter of II-271
Bullock v. Bogardus II-232
v. Bullock II-350, 382
v. Rogers III-134
v. Zilley II-373
Bulmer: Estate of II-275
Bumpas v. Chambers II-809
Bunce: Matter of I-245
Bunce v. Vandergrift I-800, 803
Bunch v. Hurst II-534, 823
v. Nicks I-152
Bundrick v. Haygood I-169
Bundy v. Bundy II-382
v. McKnight I-24, 63, 127
Bunn v. Winthrop II-468
Bunnel v. Bunnel I-423
v. Evans II-382
v. Post II-249
Bunner v. Storm I-419
Buntin v. Johnson I-126
Buntyn v. Holmes III-308
Burbank v. Burbank II-324
v. Payne II-137
v. Whitney II-270, 272, 300, 575
Burch v. Burch I-293, 294. II-111. III-202
v. Clarke I-650
v. Elliott III-511
Burchard v. Wright II-680
Burckmyer v. Mairs III-511
Burd v. Burd II-515, 534
Burdick v. Goddard I-564
Burford v. Burford I-105
Burge v. Hamilton I-57, 150, 162, 249, 253
Burger's Appeal II-521
Burger v. Hill I-674
Burghart v. Turner II-823
Burgie v. Sparks III-573
Burham v. McKnelly II-891
Burk: Will of I 56, 63, 114, 125, 134, 164
Burk v. Gleason II-873
v. Jones II-255
v. Lee II-428
Burke v. Colbert I-87. II-798
v. Coolridge II-198
v. Mutch I-349
v. Nolan I-60, 147, 413
v. Stiles II-834
v. Wilder II-342, 343
Burkhalter v. Burkhalter II-798
v. Norton III-133
Burkhart v. Gladish I-25, 41, 415
Burkhartt v. Helfrich II-343
Burkhead v. Colson III-571, 572
Burkholder's Appeal III-285
Burks v. Bennett I-351. III-568
Burleigh v. Coffin III-130
Burleson v. Bowman II-388, 390
Burley v. McGough I-28, 47
Burleyson v. Whitley II-497, 570
Burling v. Thompkins III-480
Burlington v. Foshy II-912
Burlington &c. R. R. v. Crockett I-576. II-101
Burnell: Estate of III-182
Burnell v. Malony II-23
Burnet v. Burnet II-281, 425, 426, 830
Burnett: Estate of III-413
Burnett v. Eaton II-139
v. Lyford II-227

Burnett v. Meadows I-484
v. Strong II-560, 562
Burnham v. Burnham II-562
v. Comfort I-219, 239. II-648
Burnley v. Duke I-700, 708
Burns v. Burns I-184
v. Clark II-570
v. Gd. Rapids &c. R. R. II-29
v. Travis I-230
Burnside: Succession of I-709. II-828
Burnside v. Robertson III-416
v. Wall I-346, 802
Burr v. Sherman II-74
v. Sim I-800, 801
v. Smith II-272, 301, 312, 323
Burrage v. Briggs II-887
Burrell: Estate of I-897
Burrill v. Boardman II-303
v. Shiel II-517, 539
Burritt v. Silliman I-336, 403, 415
Burroughs v. McLain II-246
v. Nutting I-73, 87
Burrows v. Stumm II-521
Bursen v. Goodspeed III-169
Burt v. Burt II-152
v Herron I-156
v. Ricker II-132
Burtis v. Dodge II-751. III-414
Burton: Estate of II-848
Burton v. Baldwin II-893, 898. III-581
v. Fainholt III-511
v. Holly I-73
v. Rutherford II-244. III-570
v. Scott II-419
v. Tuttle II-383
Burwell v. Anderson III-416
v. Madeville III-318
Busenbark v. Healey III-206
Bush: Appeal of I-637
Bush v. Adams II-238, 243
v. Clark I-793. II-868
v. Couchman II-480
Bushnell v. Bushnell III-512, 513
v. Carpenter II-518. III-202
Bussom v. Forsyth II-913
Buswell v. Eaton II-559
Butler: Estate of II-171
Butler: Matter of I-488. II-139, 169, 181, 716, 720. III-134, 366, 369, 376, 421, 443, 444
Butler: Succession of I-429
Butler v. Benson I-95, 103, 111, 187
v. Butler II-132, 139, 518, 520
v. Emmett III-171
v. Green I-806. II-819
v. Johnson II-225. III-198, 569, 570, 574, 652
Butler v. Lawson II-251. III-513, 660, 667
v. Merchants Ins. Co. II-894
v. Keelhn III-287
v. Perrott I-532, 536
v. Sisson III-656
Butterbaugh's Appeal III-413
Butterfield v. Hamant II-546
Button v. American Tract Soc. II-312, 322, 427
Buttrick v. King I-564. II-161
Butts v. Genung III-206, 207, 661
v. June I-793
Buxton v. Barrett III-373
Buzby's Appeal II-348
Byer v. Healy II-249
Byerly v. Dowlins III-424
Byers v. Hoffe I-149
Bynum v. Bynum I-10
Byrd v. Gibson I-531
v. Jones II-227, 872
v. Lurles I-236
v. Wells II-198. III-374
Byrne: Estate of II-875
Byrne v. Anderson III-447
v. Byrne II-611. III-474
v. Hume I-356. II-440, 632. III-186
Byrnes v. Dibble I-531
v. Labagh II-350
v. Stillwell II-346; 540

C.

Cabanne v. Skinner III-356
Cable's Appeal III-191
Cable v. Cable I-713
Cables v. Prescott II-911. III-132
Cade v. Davis II-926
Cadman v. Richards I-611, 612
Cady: Matter of I-704
Cady v. Bard I-431
v. Cady III-191, 193
Caeman v. Van Harke I-425, 458, 462
Cæsar v. Chew I-426
Cager: Matter of III-7
Cagney v. O'Brien I-420
Cahill: Estate of I-58
Cahill v. Breman I-797
Cahn: Matter of II-431
Cain: Matter of II-693
Cain v. Cain II-785
v. Haas I-533
Cairns v. Chaubert II-457. III-439
Cake's Appeal III-282
Cake: Estate of III-175
Calaman v. McClure II-248
Calder v. Curry III-216
v. Pyfe II-112
Caldwell v. Anderson I-69, 413
v. Caldwell I-417, 426
v. Kinkhead II-517
v. Renfrew I-81
v. Willis I-802
Caleb v. Hearn III-470, 471
Calhoun: Estate of III-357
Calhoun: Succession of I-711
Calhoun v. Cossgrove II-892
v. Ferguson II-701, 706
v. Fletcher III-182
v. Jester II-343
v. McKnight I-685
v. Whittle II-707. III-654
Calkins v. Smith II-564, 579.
Callagan v. Burns I-199
Callaghan v. Hall III-418
Callahan v. Houston I-611
v. Robinson II-786
Caloway v. Doe I-382
Calvert v. Carpenter I-448
v. Holland III-414, 420
Calvert v. Marlow III-317
Camden Mut. Assur. Assoc. v. Jones II-773, 786. III-184
Camden v. Plain III-176
Camden Safe Deposit & Trust Co. v. Ingham I-73
Cameron v. Cameron I-632, 633. III-581
v. Comrs. II-471
v. Justices III-394
v. Morris III-424
Cammann v. Cammann III-445
Camp v. Camp II-184, 645
v. Crocker II-303, 318.
v. Elliott I-321
v. Fraser I-798. II-183. III-130
v. Grant II-226. III-286
v. Grider II-239
v. Smith II-707, 760. III-362, 559.
v. Stark II-281
Campau v. Campau III-182
v. Miller II-227
Campbell: Estate of III-180
Campbell v. Browder I-88
v. Brown III-476
v. Campbell I-47. III-186
v. Cowdrey II-750
v. Gallagher II-101
v. Johnson I-651. II-52
v. Logan I-114, 125, 134, 711
v. McDonald II-563
v. Mackie II-195, 595. III-437
v. Maple III-564
v. Miller III-358
v. Owen II-132, 134
Campbell v. Purdy II-171. III-443
v. Rawdon II-349, 350, 382, 384 534
v. Renwick III-176
v. Robertson II-724
v. Rowden II-510
v. Sheldon I-318. II-800. III-515
v. Shotwell III-577
v. Tousey I-298. III-137, 515
v. Wilson III-479
Campfield v. Ely II-170, 232. III-313, 584
Canada's Appeal I-54, 127
Canal Bank v. Hudson III-192
Candler v. Dinkle II-535
Canedy v. Jones I-155
Canfield v. Bostwick I-264. 418. II-196
v. Crandall I-213, 803. II-427, 792, 865.
v. Hard III-130
Cann v. Fiddler II 709. III-199
v. Sloan III-577
Cannon v. Apperson II-172. 195, 352, 563, 621, 756, 782. III-364
v. Cook III-582
v. Ulmer II-716
Cant: Matter of III-365, 370
Capal v. McMillan I-9
Cape May: Matter of III-135
Capen v. Peckham I-867
Capper v. Sibley I-449
Capron v. Capron II-443, 444, 795
Carbaley v. State II-243
Card v. Grimman I-190
Carder v. Comrs. II-773
v. Primm III 574
Carey, Polly: Estate of I-90, 237, 674
Carey v. Baughn I-255
v. Berkshire II-100
v. Carey III-582
v. Dennis I-4
v. Guillow I-316
Carle v. Underhill I-125
Carlisle v. Burley . II-86
v. Green III-187
Carl's Appeal II-287
Carlton v. Cameron I-152
v. Carlton I-118
Carman: Matter of III-442
Carman v. Brown I-803. III-175
Carmichael, In re I-410
Carmichael v. Carmichael I-176. II-539
v. Ray III-136
Carmody: Estate of I-539
Carmary v. Woodcock II-468, 471
Carner v. Wells III-583
Carnson v. Wilsey I-625

Carow v. Mawatt I-588
Carpenter: Estate of I-712. II-169, 170
Carpenter v. Balden II-564
v. Boulder II-578
v. Brownlee II-871
v. Calvert I-12, 24, 25, 45, 48, 414, 415
v. Cameron I-282
v. Carpenter III-353
v. Denoon I-882, 673
v. Going I-313, 320, 362
v. Gray I-705, 706. III-654
v. Hays III-281
v. Heard II-827
v. Hist. Soc. II-270
v. Jones I-332, 546
v. Miller's Executors I-216
v. Miller II-317
v. Murphy II-285. III-477
v. Probate Judge I-682
v. Schemerhorn II-344
Carr: Estate of II-586
Carr: Matter of III-424
v. Bennett II-753
v. Branch I-804
v. Estill II-352, 354
v. Huette III-470, 471
v. Jeannerth I-269
v. McCamm I-20
v. McCassum I-166
v. Porter I-255, 256, 260
Carrick v. Carrick II 159. III-561
Carrigan v. Sample III-515
Carroll: Succession of I-103
Carroll: Will of I-386
Carroll v. Bosley III-378
v. Botsai III-197
v. Bonham I-170
v. Carroll I-678. II-361, 791, 887
v. Connet I-298, 575. III-376, 585, 655
v. Hancock II-538
v. Hause I-57, 58, 60, 63
v. Norton I-47
v. Richardson III-507, 661
Carskadon v. Toneyson II-303
Carson v. Carson II-361, 516, 621, 701. III-559
v. Searcy II-425
Carter: Appeal of III-667
v. Alexander II-825
v. Balfour II-300, 306, 313, 321
v. Carter II-572, 579, 872, 874
v. Dixon I-12, 66, 67
v. Dulaney III-368
v. Engles II-251
v. Hale III-581
v. Hunt II-535
v. Manufacturer's National Bank II-138
v. Phelps III-563
Carter v. Thomas I-242. III-314
v. Trueman I-649
v. Worrell III-191
v. Young I-637
Carthey v. Webb I-533, 538
Cartwright v. Cartwright III-571
Caruth v. Grisby I-795
Caruthers v. Bailey II-23
v. Corbin II-211, 226. III-420
Carver v. Lewis II-184. III-660
Carvill v. Carvill I-386
Cary v. White III-581
Cary Library v. Bliss II-314
Cascaden v. Cascaden III-651
Case v. Abeel II-154. III-316, 364, 395
v Case II-753
v. Dennison I-897
Casey v. Casey II-559
v. Gardiner I-333, 546
v. Murphy III-177
Cashman v. Wood I-799. III-204
Caskie v. Harrison I-630, 794. III-396
Cason v. Cason III-364
Casoni v. Jerome I-722
Casperson v. Dunn III-137, 508, 509
Cassaday: Estate of III-413
Cassatt v. Vogel II-237, 247
Cassels v. Vermon I-674
Cassily v. Meyer III-136
Castleman v. Dorsey III-660
Castner's Appeal II-360, 361
Caston v. Caston II-790
Cathaway v. Bowles II-846. III-559
Catholic Church v. Tobbein II-428
Catlin v. Underhill II-85. III-475
v. Wheeler II-739. III-654
Cauffman v. Cauffman II-778, 782, 789
v. Long I-413
Caulfield v. Sullivan I-466, 701. II-612, 776
Caulkins v, Bolton I-294, 796
Cavendish v. Fleming III-414, 415
v. Troy I-410
Caverly v. Eastman III-172
Cavett: Appeal of I-179
Caviness v. Rushton I-178
Caw v. Robertson II-563
Cawley: Estate of I-154, 175, 177
Cawthorn v. Coppedge II-894
Cayuga County Bank v. Bennett II-154
Cecil v. Cecil II-897, 898
v. Rose II-241
Central Bank v. Little II-199
Chace v. Chace I-242, 244, 420, 426. II-491
Chadburn v. Chadburn III-362, 558
Chadwick v. Chadwick II-564, 578, 579. III-578
v. Cornish III-579
Chaffee v Baptist Missy. Convention I-104, 134, 415
v. Maker II-624, 756
Chaffin v. Hanes II-268
Chafin: Will of I-24
Chaler: Succession of I-534
Chamberlain v. Chamberlain II-270, 271
v. Dunlop III-284
v. McDowell II-226. 227
v. Stearns II-311
v. Taylor I-799, 802, 806
v. Tiner III-480
v. Wilson III-135
Chambers: Appeal III-360
Chambers v. Baptist Educ. Soc. II-304
v. Bumpass II-700
v. Chambers II-605, 750, 751
v. Fennemore III-576
v. McDaniel I-141
v. St. Louis II-274, 285, 300, 302, 303, 323
v. Wright II-851
Champion v. Cayce III-177
Champney v. Blanchard I-897
Chandler v. Barrett I-23, 26
v. Batchelder II-825
v. Chandler I-797. III-187
v. Davidson I-308
v. Ferris I-22, 55, 57. 133
v. Hudson I-574
v. Morrison II-851
v. Rider II-155
v. Stevenson I-363. II-136
v. Woodward II-787
v. Wynne II-254
Chaney v. Bryan I-11. 41. 143
v. Home F. & F. Miss. Soc. I-106, 116, 129, 129, 175
v. Tipton II-778
Chapeau: Estate of II-830
Chapell v. Shuee II-851
Chapin: Matter of I-806
Chapin v. Hastings I-574
v. Hill I-419. II-774
v. Marvin II-524, 566
v. School District II-275, 304. 322
v. Waters I-641, 650. II-625. III-133, 174
Chapman's Appeal III-204, 205
Chapman v. Callahan II-26. III-174
v. Barnes III-281
v. Chapman II-482. III-317
v. Chick II-782
v. City II-441
v. Comings III-419
v. Craig III-183, 199
v. Davis III-480
v. Holmes III-284
Chappel v. Avery I-423. II-535 563.
Chappell v. Akin I-705
v. Missry. Soc. II-426
Chapron v. Chapron I-642, 647
Chaquette v. Ortet I-642
Charles v. Byrd I-818. II-132
v. Jacobs II-625. III-133
Charlick: Matter of II-619
Charlton's Appeal II-845. III-358
Charten v. Otis I-419
Chase: Matter of I-611. III-581
Chase v. Bradley III-361
v. Buson III-424
v. Chase II-406, 491
v. Davis II-620
v. Erving II-890
v. Evoy III-560, 562
v. Kittredge I-120, 134
v. Irwin III-579
v. Ladd III-509
v. Lockerman I-818. II-341, 440, 661. III-215, 216, 217, 219, 366, 414
v. Redding I-897
v. Stockett 1-139. II-272. 303. 468
v. Winans III-657
Chasmar v. Bucken II-343
Chatham v. Brinard II-303, 321
Chauncey: Matter of II-684
Chavey v. Peiffer II-138
Cheairs v. Smith II-562, 572
Cheatham v. Cheatham III-565
v. Hatcher I-25, 59, 60, 67, 125, 145, 415
v. Riddle III-480
Cheek v. Wilson II-872
Cheeseman v. Wilt I-369
Cheever v. Washtenaw Circuit Judge I-712
Chenault v. Chenault II-373
Chenery v. Webster III-178, 575
Cheney v. Cheney II-867
v. Selman II-382
v. Teese I-612. II-345, 536
Cheshire v. Cheshire II 680
Chesley v. Sherburne II-709
Chesnut v. Meares II-352
v. Strong II-519, 757. III-365
Chess' Appeal II-370, 541
Chester v. Green II-682
Chevallier v. Wilson III-430
Chew's Appeal II-353, 540. 565
Chew: Estate of II-152
Chew v. Farmer's Bank II-782
v. Nicklin I-803
Chewett v. Moran III-207
Cheyney's Appeal II-850
Chicago &c. R. R. v. Doyle II-29
Chicago &c. R. R. Co. v. Gould I-539, 708

Chicago &c. R. R. v. O'Connor II-100
Chicago B. & Q. R. R. Co. v. Wasserman I-245, 674
Chick v. Farr I-644. III-358
Chidester v. Chidester II-247
Chiffett v. Willis III-365
Child v. Gratiot I-271
Children's Aid Soc. v. Loveridge I-36, 47, 58, 62, 67, 119
Childs v. Jones II-871
v. Russell II-348, 547
v. Updyke II-252. III-362
Chilton v. Henderson II 390
Chinn v. Stout II-864
v. Taylor I-721
Chinnack: Estate of I-162
Chipman v. Montgomery II-778, 781. III-507. 666
Chisholm's Heirs v. Ben I-130
Chisholm v. Chisholm II-752
v. Lee II-700
Chism v. Keith II-538
Choate v. Arrington II-638, 651
v. Huff III-580
v. Jacobs I-646. II-52
v. Thorndike I-637
Choice v. Marshall II-377
Chonteau v. Snydam III-361
Chowning v. Stanfield III-182, 183, 472. 473
Chrisman v. Chrisman I-22, 23, 24, 45, 47
Christee v. Gage II-305
Christian v. Morris III-314. 585
Christian Union v. Yount II-286
Christie: Estate of III-415
Christie v. McBride III-357
v. Phyfe II-353, 354
Christler v. Meddis I-803, 806. II-706
Christman v. Siegfried II-897
Christophers v. Garr III-576
Christy's Appeal II-893
Christy v. Ashtabula Co. II-275
Church v. Ackerman II-791
v. Bull II-779. 787
v. Church II-827
v. Crocker I-244
v. Holcomb II-138
v. Howard III-581
v. Olendorf III-566
Church Extension v. Smith I-270, 304. 802, 830
Church of Redemption v. Grace Ch. II-271
Church Soc. v. Hatch II-426
Churchill v. Bee II-781, 790. 866
v. Boyden III-136
v. Churchill II-859
v. Prescott II-926. III-134
Cilley v. Cilley I-126
Cincinnati v. McMicken II-315
Cincinnati &c. R. R. v. Heaston II-237. III-207
v. Prewit II-30
Ciples v. Alexander III-582
Circe : Succession of II-926
Cissell v. Cashell III-191
Citizen's Mut. Ins. Co. v. Ligom III-318
City v. Walton II-276
City of Carondelet v. Desnoyer II-241
City Council of Charleston v. Hagermayer II-912
Claffin v. Buhr II-215
v. Felton II-507
Claget v. Hawkins I-721
Claggett v. Hardy II-479, 700, 701
Clanton v. Estes II-540
v. Price III-569
Clapp v. Beardsley II-132
v. Clapp II-560. III-319
v. Clark III-510
Clapp v. Engledon II-184
v. Fullerton I-11, 41, 44, 410
v. Ingraham III-139
v. Meserole II-739
v. Walters III-352
v. Stoughton II- 547, 822, 829
Clark: Estate of II-213. III-281, 416, 417
Clark: Matter of I-427. III-7, 179
Clark: Will of I-184
Clark v. Anderson III-369, 442
v. Atkins II-476
v. Bell III-582
v. Blackington I-143. II-132, 140. III-377, 420
v. Burnside I-866
v. Butler II-753, 754, 757
v. Carroll II-26
v. Clark I-530. II-75. 242. 281, 457, 492, 786, 846. III-394, 475
v. Clough III-579
v. Crego I-796
v. Davis II-240. III-186
v. Denton II-492
v. Deutsch III-180
v. Ellis I-11, 22, 24
v. Eubank II-258. III- 358, 656
v. Fisher I-26, 28, 30. 45, 47
v. Fredenburg I-637, 638
v. Gerard III-415
v. Grambling II-153
v. Griffith II-779, 787
v. Herring III-558
v. Hershy II-783
v. Hornbeck III-133
v. Hughes III-414
v. Jetton II-648
v. Knox II-195, 247. III-183
v. Lamb III-479
v. McClellan II-26
v. Middlesworth II-790
v. Moses II-136
v. Niles I-625. 626
v. Parkville &c. R. R. II-240
v. Platt III-442
v. Preston I-9
v. Sawyer I-410
v, Scott II-384
v. Smith I-183, 189
v. Stanfield II-541
v. State I-409
v. Swift II-25
v. Tainter I-324, 336. III-378
v. Tallman II-235, 244
v. Tennison II-588
v. Todd III-280
v. Warner II-895. 897
v. Williams III-375
v. Willson II-893. 898
v. Winchell III-207
v. Wright I-210, 460
Clarke's Appeal III-414
Clarke v. Alexander III-313
v. Bogardus II-618
v. Chapin I-632
v. Clay I-641
v. Collins III-568
v. Cordis II-384
v. Cotton III-394
v. Goodrum I- 298, 302
v. Henshaw III-217
v. Higgins II-101
v. Jenkins III-393, 394
v. Johnston III-656
v. Ransom I-149, 210, 211, 214
v. Rice I-628. III-475
v. State I-630. III-396
v. Terry II-707
Clarkson v. Beardsley I-676
v. Pell II-482
Clary v. Clary I-408, 409
Clauser: Estate of III-446
Clawson's Appeal III-416
Clawson v. McCune II-249. III-577
v. Moore III-281
Claxton: Will of I-207
Clay v. Field I-794
v. Hart I-800, 803, 806. II-777, 782
Claypole v. Norcross II-318, 324
Clayton: Estate of III-571
Clayton v. Akin II-675
v. Blough III-473
v. Boyce III-202, 208
v. Drake II-912
v. Liverman I-10
v. McKinney II-51
v. Somers II-226. 520, 756. III-200. 203
v. Wardell II-253
Cleare v. Cleare I-413
Cleary's Appeal III-189
Cleaver v. Cleaver II 513
v. Kirk II-891
Cleaves v. Dockray I-648
Cleere v. Cleere I-644
Cleghorn v. Johnson II-869
Clemens v. Caldwell I-706
Clement's Appeal II-482
Clement: Estate of III-131
Clement v. Brainard I-676
v. Cozart III-171, 174, 176
v. Foster III-173
v. Hyde II-302
v. Riley III-411
Clements v. Kellogg III-560
v. Rogers II-692
Clendaniel: Estate of II-912
Clendening v. Clymer I-420. II-649
Clermontel: Estate of III-443
Cleveland v. Carson II-493
v. Chandler I-628. III-473
v. Havens I-417
v. Quilty I-710
Clifford v. Campbell III-374
v. Richardson I-410
Clifft v. Wade II-848
Cliff v. Moses I-799, 803. III-197
Clifton v. Clifton I-30. 49, 50, 57, 58. 60
v. Haig III-658
v. Murray I-20, 132
Clinch v. Eckford III-437
Cline's Appeal III-319
Clinefelter v. Ayres III-217
Clingan v. Mitcheltree I-179, 184, 189, 240
Clock v. Chadeayne II-648. III-364, 421
Clocke v. Igglesden III-178
Clopton v. Gholson III-313
v. Haughton III-353, 653, 656
Cloud v. Clinkinbeard II-609, 617
Clough v. Clough II-578
Clore v. McIntire II-32
Clow v. Plummer I-432
Cluff v. Day I-626, 639
Clute: Matter of I-722
Clute v. Gould III-442, 443, 445
Clyburn v. Reynolds III-689
Coakley v. Daniel II-352
Coalter v. Bryan I-403
Coates: Appeal of I-157
Coates: Estate of II-871
Coates v. Mackin III-653
v. Street II-360, 506. 510
Cobb v. Battle I-420
v. Denton II-272
v. Kempton III-170. 176
v. McCormick II-751
v. Muzzey II-252. III-373. 374
v. Newcomb I-631
Cobble v. Tomlinson I-794
Cobel v. Cobel I-803
Coburn v. Harris III-568
Cochran: Will of I-51. 120
Cochran v. Cochran III-204
v Elwell II-761
v. Thompson II-112
v. Thorndike II-794

Cochran v. Young I-675
Cochrane v. Hawver III-186
Cock v. Carson II-113
Cocke v. Evans I-352
v. Montgomery II-238
Cockerill v. Armstrong I-159. III-179, 195
v. Dale III-192, 200
Cockrill v. Cox I-49, 386, 449
Cocks: Matter of III-396
Cocks v. Haviland III-394, 560, 564
v. Varney I-429, 432
Coco: Succession of II-850. III-353
Codding v. Newman I-334, 336
Coddington v. Bispham II-653. III-183, 479
v. Havens II-432
v. Stone III-367, 377
v. Whitaker III-480
Coffee v. Norwood III-512
v. Ruffin II-225. III-356, 366
Coffer v. Wells I-818
Coffin v. Coffin I-120,125,137, 166. II-343
v. Elliott I-418
v. Jones I-647
Coffman: Matter of I-23
Coffman v. Coffman I-153
v. Hedrick I-11, 66. III-581
v. Reeves I-385
Cogan v. Duncan III-583
Cogbill v. Cogbill I-183
Cogburn v. McQueen I-700
Cogdell v Cogdell I-255. II-441
Coggeshall v. Pelton II-307
Cogswell v. Cogswell II-753
Cohea v. Jemison I-799
Cohen: Appeal of I-277, 705
Cohen: Will of I-95, 108, 111
Cohen v. Hymes III-317, 513
Coit v. Comstock II-274, 304, 313,321
v. Patchen I-34, 42, 57, 58, 63, 67
v. Rolston II-524
Coker v. Crozier II-27
Colbert v. Daniel III-216, 377, 515
v. Moore III-320
Colburn v. Hadley II-510
Colby v. Duncan II-540
v. King II-247
Cole: Will of I-34, 41
Cole v. Cole II-785
v. Covington I-94, 155. II-618
v. Crayon II-538
v. Dial I-701,709
v. Frost II-287
v. Gardner III-579
v. Lafontaine III-169, 171, 176
v. Terpenning III-571
v. Wooden I-593. III-560, 561
Colegrove v. Robinson III-375
Coleman: Matter of I-414
Coleman v. Brooke II-873
v. Coleman II-198
v. Hall II-255. III-583
v. Hutchinson II-515, 534
v. McCormick III-184
v. Parker I-897
v. Woodworth II-28, 244. III-287
Coles: Will of I-627
Coley v. Ballance II-506
Colfax v. Colfax II-26
Colgan v. Dunne II-800
Colgate: Will of I-386
Colgate v. Colgate II-785
Colgrove v. Horton I-274, 624
Colhoon: Estate of II-752
Colhoun v. Jones I-40, 41, 59, 68
Collamore v. Wilder II-247
Collagan v. Burns I-187
Collard: Estate of I-802
Collier v. Dade II-85
Colles: Matter of III-439
Collier: Will of II-515, 516, 518, 544, 546, 565
Collier v. Collier I-800. II-383, 478, 866
v. Jones I-317
v. Miller II-800
v. Munn III-443
v. Slaughter II-520, 587
Colligan v. M'Kernan I-212
Collin's Appeal III-193
Collin v. Collin II-348, 517
Collins. Estate of II-875
Collins: Matter of I-113, 128. II-399. III-564, 570
Collins v. Ayers III-480
v. Berger II-506, 535, 827
v. Brazill I-392, 402
v. Carlisle I-159, 642. III-396
v. Carman II-778, 786, 789
v. Collins I-627. II-792. III-285
v. Collis III-423
v. East Tenn. &c. R. R. II-33
v. Greene III-475, 563
v. Hoxie II-364
v. Jancy II-773
v. Nicols I-134
v. Osborn I-20, 45
v. Ross I-674, 677
v. Spears I-538
v. Tilton III-444
v. Townley I-45, 47
v. Turner I-353
v. Woods II-788
Collyer: Matter of II-195, 844. III-138
Collyer v. Collyer I-207, 208, 450, 456, 457, 458, 459, 460. II-194
Colson v. Brainard III-177
v. Martin II-856
Colt v. Colt III-654
v. Houdlett III-138
v. Hubbard II-521
v. Lanier III-365
Coltart v. Allen I-677
Colton v. Colton I-158
v. Field II-216
v. Fox II-539
v. Onderdonk III-473
v. Stanford III-361
Columbus Insurance and Banking Company v. Humphries III-370
Columbus Watch Co. v. Hodenpyl III-587
Colvin: Estate of I-592, 593
Colwell: Succession of II-888
Colwell v. Alger II-181, 559. III-558
Comb's Appeal II-281
Combs: Matter of II-753
Combs v. Jolly I-9, 120, 125, 129
Comegys v. State III-415
Comer v. Comer II-848, 897. III-580
Comfort v. Mather I-417, 418. II-496, 500, 501
Commercial Bank v. Slater II-233, 235
Commrs. v. Greenwood II-198
v. Rogers II-302
Common Council v. State II-304
Commons v. Commons III-191, 197, 202
Commonwealth's Appeal III-2, 3, 6, 7
Commonwealth v. Andre I-12
v. Blanton II-913
v. Bryan I-641. II-180, 184
v. Coleman III-2, 3
v. Duffield III-139
v. Fairbanks I-407
v. Forney I-625, 637, 638, 705
Commonwealth v. Hammond III-559, 572, 573
v. Hilgert I-638
v. Leach II-299
v. Lewis II-214
v. Mateer I-332, 594. III-414, 417
v. Meyerhaven I-637, 649, 651
v. Moltz I-647
v. Nanerede III-4
v. Nare II-513
v. Rich I-407
v. Rogers I-626
v. Shelby III-215
v. Stauffer II-568
v. Stump III-5
v. Wenrich I-647
v. Wilson I-407
Compher v. Compher II-873
Compton v. McMahon I-799
v. Mitton I-120, 125, 129, 134
v. Perkins II-871, 872
v. Pruitt III-180
Comstock v. Crawford I-713
v. Hadlyme I-18, 47, 119, 179, 403, 404, 426. II-428, 491
v. Smith I-543
Conant v. Hill III-566
v. Kent II-912
v. Stratton I-626, 651
Condit v. Winslow III-356
Condict v. King I-264. II-609, 694
Cone v. Crum III-567
Conely v. McDonald I-42, 416
Conger v. Atwood III-183
v. Bean III-581
v. Cook III-169, 175
Conigland v. Smith III-131
Conkey v. Dickinson III-378
Conklin: Estate of III-137, 446
Conklin v. Conklin I-897. II-537
v. Egerton's Administrator I-336
v. Egerton I-564
v. Moore II-536
Conley v. Kincaid I-800. II-342, 344
Conn v. Conn II-342
Connecticut River Savings Bank v. Albee III-579
Connelly v. Weatherby II-237, 240. III-283
Conner: Estate of III-429
Conner v. Coffin I-868
v. Johnson II-344
Connolly: Estate of I-636
Connolly v. Pardon II-424
Connor: Matter of II-286
Connors v. Burlington &c. R. R. II-29
Conoly v. Gayle I-118, 155
Conover v. Conover III-438, 657
v. Ellis III-441, 444
Conrad: Matter of II-152
Conrad v. Long II-572
Consalus: Matter of II-624. III-133, 356
Constantinides v. Walsh II-170
Continental Life Insurance Co. v. Barker III-568
Convention v. Ladd II-427
Converse: Estate of I-299, 308
Converse v. Converse I-18, 24, 45
v. Kellogg II-517
v. Sorley II-215, 235, 242
v. Wales I-244, 426. II-491
Convey: Will of I-120, 129
Conway: Matter of I-95, 108, 153
Conway v. Vizzard I-127, 425
Conwell v. Heavilo II-535
Conwill v. Conwill III-425
v. Livingston III-360
Cony v. Lamb II-792
Conyers v. Gray I-643
Coogan v. Ockerhausen I-797. III-172
Coogler v. Rogers I-539

Cook: Estate of I-25. II-588
Cook: Will of I-184
Cook v. Brannin II-214
v. Carr I-533
v. Chambers III-513
v. Champlain Transportation Co. I-867
v. Cook I-488, 802, 806. III-132, 179, 204
v. Ellington I-156
v. Grant I-118
v. Lanning II-424, 497. III-193
v. Lovell III-478
v. Lowry III-446
v. Munn II-513
v. Petty III-193
v. Ryan III-184
v. Sexton II-870
v. Weaver I-9
v. Whiting I-866
v. Woodward III-178
Cooke v. Husbands I-76
v. Meeker II-695, 753
v. Platt I-565, 566
Cool v. Higgins II-171. III-198
Cooley: Matter of III-131
Cooley v. Dewey II-887
v. Patterson III-565, 570
v. Smith II-243
v. Van Syckle I-796. III-354, 422
Coon v. Bean II-588
Cooner v. May II-895
Coope v. Lowerre I-247, 532. 540
Cooper: Matter of III-437
Cooper v. Bigly III-221
v. Burton III-422
v. Cannon II-399
v. Cherry III-575
v. Clasn II-573
v. Cooper III-371
v. Duncan I-675
v. Felter II-215, 249
v. Hepburn II-351, 515, 536
v. Loughlin III-205
v. Pierce II-867
v. Remsen II-573
v. White III-130
v. Williams III-372
Coover: Appeal of I-530
Copeland v. Barrow II-705
v. Copeland I-23
v. Koonz III-579
v. McCue III-368
Copenhaver v. Copenhaver II-912
Copia: Estate of II-472
Copp v. Hersey II-794
Copper v. Wells III-506
Coppersmith v. Wilson III-478
Corbett v. Laurens II-388
Corbin v. Mills II-443
v. Wilson II-517
Corbitt v. Corbitt II-380
Corby v. Corby I-156
Corcoran v. Boston &c. R. R. II-29, 30
Corker v. Corker I-238
Corle v. Monkhouse II-696, 700. III-365
Corlies v. Allen II-483
v. Little I-565. II-155
Corliss Engine Co. v Schumacker III-569
Corliss v. Worcester &c. R. R. II-33
Cormick v. Sullivan II-784
Corn: Estate of I-701
Corn v. Corn I-701
Cornelius: Will of I-104, 106, 114
Cornell: Estate of II-287
Cornell: Matter of II-388
Cornell v. Fiske. II-288
v. Gallagher I-539
v. Isham I-117
v. Lovett II-587
Cornes v. Wilkin II-232, 248
Cornish v. Wilson I-688. III-217
Cornpropst: Appeal of I-540
Cornthwaite v. First Nat. Bk. III-315
Cornwell v. Cornwell I-592, 611
v. Deck II-172, 196, 197. 198, 874. III-363, 420
v. Ricker I-24, 25, 45, 47
v. Wooley II-281
Corriell v. Ham II-782
Corrigan v. Jones I-353, 429, 444, 676
Corrington: Estate of III-372
Corson v. Berson II-236
Corwin v. Lowell II-102
Corwine v. Corwine II-438, 661. III-193
Cory v. Cory II-780
Coryell v. Stone I-42, 415
Cosbey v. Lee II-382
Costephens v. Dean III-139
Cote v. Bonnhorst II-351, 354
Cotham v. Britt II-25
Cotherman v. Cotherman III-578
Cothran v. McCoy III-472
Cotter: Estate of I-536
Cotter v. Quinlan II-234. III-577
Cotterell v. Brock I-274, 624
Cottle: Matter of I-701
Cottle v. Vanderheyden I-533
Cottman v. Grace II-301, 431
Cotton v. Jones II-243, 248. III-568
v. Ulmer I-23
Cottrell: Matter of I-144, 147, 712
Couch v. Eastham II-752
Coudert v. Coudert I-241
Coughlin v. Powlson I-21
Coulson v. Holmes I-239
v. Wing III-184
Countryman: Estate of II-875
County Court v. Bissell I-708
Coursen: Matter of I-533. 545
Coursen: Will of III-512
Cousins v. Partridge III-562
Coutant v. Schuyler I-897
Covenant Association v. Hoffman I-794
Coveney v. McLaughlin II-538
Covenhoven v. Covenhoven III-376
v. Shuler II-457
Cover v. Stem' I-149
Coverdale v. Aldrich III-138, 139
Covert v. Seburn II-424
Covin: Estate of II-620, 900
Covington v. Lattimore III-358
Cowan v. Espes II-540
Cowdin v. Perry I-794. III-376, 666
Cowdrey v. Hitchcock II-781, 793
Cowdrey: Matter of II-250
Cowell v. Oxford II-799
Cowgill v. Dinwiddie II-248
Cowles v. Cowles II-342
v. Hayes I-612. II-113
v. Reavis I-388
v. Whitman III-506
Cowley v. Bates III-560
v. Knapp I-148
Cox: Estate of III-178
Cox v. Baker II-194
v. Brown II-869
v. Cody II-869
v. Corkendall II-752. III-191
v. Cox I-674. II-889. III-569. 657
v. Curwen II-409
v. Harris II-826, 827
v. Hunter III-510, 513
v. McBurney I-819
v. McKinney II-517
v. Maxwell III-281
Cox v. Morrow II-856
v. Rogers II-775, 782, 783
v. Roome III-363, 376
v. Schermerhorn III-439
v. Wills III-364
Coye v. Leach II-497
Cozens v. Colson II-564
Cozzens: Will of I-103
Cozzens: Matter of III-394, 395
Crabb v. Young III-366
Crabtree v. Graham II-246 III-576
Craddock v. Turner I-653
Craft v. Snook II-478
Crafton v. Beal I-294, 296
Crafts: Ex parte I-534
Craig v. Barnes II-750
v. Beatty I-387, 709. II-827
v. Conover II-790
v. Craig I-794, 897. II-694, 829
v. Doherty III-509
v. Jennings III-510, 511
v. Leslie I-13, 800. II-273
v. Secrist II-275, 304, 315, 322
v. Walthall II-780
Craige's Appeal II-539
Craighead v. Given II-501, 830
Cram v. Cram I-408, 409. II-483. III-442, 447
Cramer v. Crumbaugh I-60, 69
v. Sharp I-529, 532
Cramp's: Appeal II-245 III-179
Cramp v. Armstrong II-172
v. Williams I-703, 707
Cranch v. Edwards I-636
Crandall v. Hoysradt II-559
v. Shaw I-592, 611
Crane v. Bolles I-803. III-371
v. Conklin III-651
v. Crane II-827, 888. III-580
v. Guthrie III-182
v. Hearn III-397
v. Howell III-369
v. Moses II-234, 701. III-363
v. Northfield I-410
v. Van Duyne II-164
Cranmer v. McSwords III-215, 221
Cravath v. Clympton II-27
Craven v. Craven II-789
Cravens v. Faulconer I-129
Crawford: Matter of II-633 III-442
Crawford v. Blackburn II-138
v. Crawford III-359, 411
v. Ridus II-847
v. Thompson II-588
v. Tribble I-650
v. Tyson I-703
Cray v. Herder II-696
Craycroft v. Craycroft II-506
Creacraft v. Dille II-786
v. Wions II-786
Creamer v. Holbrook III-423
v. Sirp III-283
Creath v. Brent I-100, 561, 578
Creed v. Lancaster Bank II-894, 897
Creely v. Ostrander I-57
Creesy v. Willis III-186
Cregin v. Brooklyn City R. R. II-33, 100
Creighton v. Murphy II-240
Crenshaw v. Bentley III-440
v. Carpenter II-778
Crerar v. Williams II-827
Cresse: Estate of I-532
Cresse: Matter of I-534
Creswell v. Kennedy III-653
v. Lawson II-462, 560, 770
v. Slack III-515
Cresson's Appeal II-300, 307, 424, 536
Crickard v. Crickard III-368
Crider v. Curry I-648
Cridland: Estate of III-368

Crim v. Knotts II-538
Crippen v. Dexter I-679.680
Crisp v. Crisp II-537
Crispell v. Dubois I-59, 163, 413
Crispin v. Winkleman I-103
Crist v. Crist II-678
Crittenden: Estate of I-120, 127, 134
Crittenden v. Bason III-510
Critz v. Pierce I-25
Crocker v. Chase I-427
v. Crocker I-418
v. Dillon II-717, III-378
v. Smith I-151, 154
Croft v. Bolton II-73
v. Williams III-394
Crolius v. Stark I-47
Crombie v. Engle II-162, III-178
Cromer v. Pinckney II-373
Cromie v. Louisville Orphan Home II-303, 427
Cronan v. Cotting III-312, 352, 561
Cronin: Estate of II-847
Croninger v. Marthen II-226
Cronise v Hardt III-178
Crook: Estate of I-356. II-361
Crooks v. Jewell II-132
v. Whitford III-585
Croom v. Herring I-800. II-381
Crosby: Estate of I-448. II-240, III-169
Crosby v. Covington II-851, 898
v. Crosby II-535
v. Leavitt I-349, 484, 677
v. Lewis II-364, 365
v. McDoual I-4
v. Mason I-417. III-509
Cross v. Baskett II-162. III-412
v. Brown III.130
v. Carson II-569, 565
v. Cross II-383
v. Johnson II-866. III-182
v. United States Trust Co. III-508
Crossby v. Smith II-344
Crossman: Matter of II-829
Crossman v. Crossman I-155, 160, 196, 206, 375, 390, 392
Crosthwaight v. Hutchinson II-773, 780
Croswell v. Slack III-169
Crothers v. Crothers III-579
Crouch v. Davis II-612
Crow v. Day III-667
v. Hubard II-874
v. Powers II-789
Crowder v. Shackelford II-195, III-445
Crowe v. Peters I-409
Crowley v. McCrary III-314
v. Mellon II-227
Croxton v. Renner I-576
Crozier's Appeal II-778
Crozier: Estate of I-713
Crozier v. Bray I-253
v. Goodwin I-592
Cruce v. Cruce II-868. III-417, 418
Cruger v. Heyward II-350
Cruikshank v. Luttrell III-182
v. Parker I-797
Crum v. Bliss II-289, 428. 827
v. Sawyer I-237
Crumley v. Deake III-218
Crump v. Faucett II-889
Cruse v. Axtel II-303, 321
v. McKee II-360, 361
Cryder's Appeal II-452, III-213, 218, 219
Cryst v. Cryst II-22
Cubberly v. Cubberly I-398
Cudney v. Cudney I-65, 66. 179
Culberhouse v. Shirey II-23, III-173, 182. 472
Culbertson's Appeal III-442
Culin's Appeal II-571
Cullerton v. Mead II-245
Culley v. Mohlenbrock I-583
Culp v. Lee II-342. III-576
Culver v. Hardenburgh III-170, 179
v. Haslam I-410
Cumberland v. Coddington III-186
Cumberland, Duke of v. Graves I-14
Cumming v. Reid I-150
Cummings: Estate of II-443
Cummings v. Allen II-868
v. Bradley II-135, 198. III-358, 359
v. Bramhall II-506, 645, 894, 899
v. Brock III-373
v. Cummings II-663, 874
v. Johnson III-180
v. Plummer II-360
v. Thompson II-253
Cumston v. Bartlett II-828
Cunard: Matter of III-509
Cunes v. Bessoni I-414
Cunliffe v. Cross I-20
Cunningham: Estate of I-51. 709, II-774
Cunningham: Matter of I-230
Cunningham v. Cauthen III-354, 412, 422
v. Cunningham II-216, 826
v. Davis I-152, 153
v. Gamble II-864
v. Shannon II-785
v. Souza I-625
v. Thomas I-532
Curd v. Curd II-872
Cureton v. Mills I-612. III-134
Curie v. Curie II-214
Curley v. Hand II-259
Curling v. Curling II-304, 313, 316
Curran v. Kennedy II-160
v. Kirby III-177
v. McMeen II-542
v. Sears I-356. II-270
v. Witter III-479
Currie v. Currie I-298, 302
v. Fanning II-270, 287
v. Knight III-651
v. McNeil III-352
Curry: Matter of III-510
Curry v. Brockway III-510
v. Fulkinson II-75
v. Hill III 139
Curtis: Matter of III-187
Curtis v. Adkins II-757
v. Bank III-314
v. Brooks II-846
v. Burt I-531. 544, 702
v. Campbell III-179
v. Hewins II-913
v. Mansfield III-585
v. Sutter II-50
v. Williams I-531, 544, 562, 631, 701
Cushing: Matter of II-480, 481
Cushing v. Aylwin I-87. 265
v. Burrell II 425
v. Cushing II-900
v. Field III 583
Cushman v. Horton II-382, 385
Cuthbert v. Cuthbert II 443
Cuthbertson: Appeal of I-413, 414
Cutler v. Howard I 271
v. Middlesex Mfg. Co. III-477
Cutliff v. Boyd II-847, 894
Cutright v. Stanford II-852, III-206, 208
Cutter v. Butler I-72, 78
v. Doughty II-359
Cutting: Matter of I-540
Cutting v. Cutting III-139
v. Tower II-27
Cutts v. Haskins I-353, 677, 700

D.

Dabney's Appeal III-354
Dabney v. Bailey II-781
v. Cattrell II-472
Daboll v. Field II 518
DaCosta v. Bass II-534
Dahlgren v. Duncan III-285
Dahmann v. Schreimer II-610
Dailey v. New Haven II-275, 302, 323, 324
Daily v. Daily III-313, 580
Dalngerfield v. Smith III-208, 561
Daisey: Estate of II-913
Dale: Appeal of I-416
Dale v. Dale I-65, 66
v. Hanover National Bank II-867
v. Hays I-693
v. Keyes II-346
v. Lincoln II-73
v. Roosevelt II-103
v. White II-344, 518, 519, 546
Dallam v. Dallam II-583
Dalrymple: Estate of I-21
Dalrymple v. Gamble I-534. 563, 700. II-194. 460
Dalton v. Wickliffe I-117
Daly's Appeal III-173
Daly: Estate of III-188, 395
Daly v. N. J. & Co. II-29, 31
v. Wilkie III-192
Damonth v. Klock I-488
Damrell v. Hartt II-406
Dan v. Brown I-179, 187. 212
Dana: Estate of II-180
Danbridge v. Minge III-186
Danby v. Cummins III-445
v. Dawes I-349. 449
Dancy v. Duncan III-179
Dane v. Walk II-365
Danforth's Appeal II-761
Danforth v. Talbot II-516, 517, 524, 565
Daniel v. Bellamy I-386
Daniel v. Daniel I-45
v. Fain II-324
v. Hill I-68, 152, 166
v. Hollingshedd II-83
v. Lehre III-565. 661
v. Richardson II-74
v. Stough II-140
v. Whartenby II-390
v. Wilson III-173
Daniels v. Ritchie III-480
v. Smith III-434
Danish v. Disbrow III-201
Danser v. Jeremiah I-356
Danvelli v. Danvelli II-868
Danzey v. Smith III 511
Darby v. Mayer I-675, 679
Darden v. Reese II-873
Dare v. Allen II-78. III-512, 657
Darling v. Blackstone Mfg. Co. II-24
Darne v. Lloyd II-643. 890
D'Arnsment v. Jones I-678

Darrah v. Cunningham II-783
Darrell v. Eden III-416
Dascomb v. Marston II-274, 302, 305, 306, 313, 478
Dashiell v. Attorney-General II-300, 317
Dater v. Wilson I-468
Daugherty v. Daugherty II-788
Dauterive: Succession of I-117, 156
Davenport: Matter of II-249
Davenport v. First Congregational Society III-362
v. Richards III-132
v. Sargent III-197
Daves v. Haywood II-211
David v. David III-580
Davids: Matter of III-172, 180
Davidson: Estate of II-562, 566
Davidson v. Bates II-536
v. Coon III-193, 655
v. Davis II-790, 793
v. Moore III-445, 447
Davie v. Briggs I-546
Davies v. Morris I-105
Davies v. Mead III-585
Davis: Appeal of II-875, III-414
Davis: Estate of I-89, 237, III-437
Davis: Matter of III-418, 422
Davis v. Bawcum II-535
v. Brandon II-113
v. Cain II-443
v. Callahan II-830
v. Calvert I-30, 58, 68
v. Chapman III-356
v. Clark I-712
v. Connelly I-303, III-515
v. Corwin III-559
v. Crandall II-440 III-362
v. Davis I-64, 305, II-341, 383, 781, 848, 871, 875, III-573, 579
v. Estey II-926, III-136
v. Fogle I-245
v. French III-315
v. Garrett II-899
v. Gower II-868
v. Harper III-368, 667
v. Haywood II-890, 899
v. Hoover I-565, III-180
v. Inscoe I-333
v. King I-246, II-913
v. Marcum II-135
v. Milligan I-539, II-268
v. Morris III-516
v. Newman II-800
v. Newton II-850, 851
v. N. Y. &c. R. R. II-30
v. Perry III-206
v. Rogers I-20, 119, 404
v. Rowe II-912
v. Seaman III-582
v. Semmes I-134
v. Sigourney I-210, 458, 460
v. Smith I-627, 701, II-232, 251, 824
v. Sowell I-794
v. Stinson II-912
v. Swanson III-511
v. Swearingen I-534
v. Taul II-496, 500
v. Taylor III-480
v. Townsend III-184
v. Vandeveer II-912
v. Van Sands II-800, 851, III-207
v. Weed I-313
v. Whittaker II-899
v. Williams II-478
Davison v. Davison II-782
v. Moore II-760
v. Rake II-750
Davone v. Fanning II-140, III-420
Dawes v. Boylston I-268, II-926, III-138
v. Head III-136
Dawes v. Swan II-756
Dawson v. Dawson III-573
v. Godfrey I-13
v. Hemebrick III-421
v. Macknet II-896
v. Mayall III-184
Day: Ex parte I-175
Day v. Case I-794
v. Day I-61, 132, 133, 214, II-194, III-130
v. Graham III-175
Dayger: Matter of I-138
Dayhuff v. Dayhuff III-477
Dayton v. Bartlett III-317
v. Fisher I-886
v. Johnson I-629, 653
v. Tillon II-468
Deaderick v. Cantrell III-395
Deakins v. Hollis I-4, 118
Dean's Appeal II-251, III-177
Dean: Succession of II-183
Dean v. Biggers II-610
v. Dean I-22, 128, II-111, III-175, 217, 318
v. Duffield II-152, 240
v. Felly II-534
v. Hart II-707, 795
v. Hunt II-786
v. Negley I-62, 68
v. Parker I-795
v. Partis II-225
v. Rathbone III-354
Deane v. Caldwell II-253
v. Littlefield I-345
Deans v. King III-581
v. Wilcoxen I-575, III-170, 176, 177
Dearborn v. Mather I-316, 369
Dearing: Matter of I-722
Deas v. McRea III-314
v. Spann III-357
Deaves: Estate of I-208, 209, 458, 459, 460
De Bardelaben v. Stoudenmire III-512
Deberry v. Ivey III-134, 357
DeBoisblanc: Succession of II-878
DeBruler v. Ferguson II-302, 313
DeCamp v. Dobbins I-422, II-288, 300, 311, 322, 427
v. Hall II-506
v. Wilson III-281
Deck: Estate of II-874
Deck v. Gherke III-373
Decker v. Decker I-349, 545, II-472, 825, III-190, 196, 656
v. Waterman I-67, 68
DeConcilio v. Brownrigg II-226
DeCoster v. Wing II-911
DeCouche v. Savetier II-679, III-572
DeDiemar v. Van Wagenen III-362
Deegan v. Capner III-658
Deering v. Adams I-331, 798, 799, III-378
v. Kerfoot II-211
v. Tucker II-576
Deford v. Deford II-826
Defriez v. Coffin I-651, III-375
Deginther's Appeal III-132
DeGodey v. DeGodey I-795
Degraaf v. Terpenning II-642
DeHart v. DeHart II-250, III-658
DeHaven: Estate of III-316
DeHaven v. Sherman III-202
v. Williams II-153
Deichman's Appeal II-211
Deichman v. Arndt II-612
DeKay v. Hackensack Water Co. III-370
Delabigarre v. Second Municipality III-361
Delafield v. Barlow I-801
Delafield v. Parish I-18, 23, 24, 59, 60, 163, 164, 189, 216, 410, 413
v. Schuchardt III-365
v. Shipman II-347, 482, 541
De la Guerra v. Packard I-299
Delamater: Estate of II-465, 476
DeLamater v. McCaskie II-195, 196
DeLane: Case of I-708
Delaney v. City of Salina I-46
v. McCormack II-350, 403
v. Noble I-722
v. Van Aulen II-664
Delaplaine: Matter of I-350, 435, II-152, 153, 195
Delavergne v. Dean II-544
Delaware &c. R. R. v. Gilbert III-319, 561
Delay v. Vinal II-782, 791
DeLayer: Matter of I-802
Delehanty v. St. Vincent's Orphan Asylum II-825
Delinotte v. Taylor I-896
Delk v. Punchard I-632
DelValle: Estate of I-443
Demarest: Estate of I-624
Demarest: Matter of III-395
Demarest v. Hopper II-382, 535, 536
Demere v. Scranton II-800
Demill v. Reid II-541
Demmert v. Schnell I-60, 67
Demond v. Boston II-28, 101
Demorest v. Vandenberg II-233
DeMott v. Field III-562
Dempsey: Will of I-334
Den v. Allen I-119, 404, 798
v. Blackwell II-575
v. Brown II-564
v. DeHart III-583
v. Demarest II-536
v. Gibbons I-410, II-575
v. Hance II-561, 563
v. Jaques III-208
v. Johnson I-46
v. Jones III-200
v. Laquear II-382
v. Lawrence II-583
v. Lecony I-529
v. Manners II-344
v. Messenger II-563
v. O'Hanlon III-172
v. Payne II-460
v. Schenck II-565
v. Steelman II-584
v. Snowhill I-214
v. Vancleve I-46, 212, 214, 418
v. VanRiper II-823
Denegre v. Denegre III-363
Denfield v. Petitioner II-480
v. Smith II-589
Denholm v. McKay III-316
Deninger v. Deninger II-241
Denise v. Denise II-513, 621, 850, III-581
Denison v. Denison III-582
Dennett v. Hopkinson I-843, II-460
v. Taylor I-107, 137
Denney v. Pinney I-60, 64, 127
Dennick v. R. R. Co. II-29
Denning v. Ocean Nat'l Bank III-479
v. Todd I-611
Dennis: Estate of II-211, 874
Dennis: Goods of I-266
Dennis v. Jones I-798, III-180
v. Warder I-265
v. Weekes I-409
v. Winter I-675
Denny v. Allen II-346
v. Booker III-352
v. Close II-360
v. Denny III-579
Densler v. Edwards I-305, 309, 318

Denson v. Beazley I-34, 42
Dent's Appeal II-927
Dent v. Ashley III-515
Denton: Matter of II-694, 701, 822
Denton v. Clark II-155
v. Franklin I-120
v. Sanford III-284, 369
Denver etc. Railway Co. v. Woodward III-480
Deobald v. Opperman III-424
Depew: Matter of III-441
DePeyster v. Clarkson III-415
v. Clendinning I-264, 336, 800, 802. II-457, 706, 830
Depriest v. Patterson II-135, III-358, 359
Deraismes v. Deraismes II-197
v. Dunham I-693, 702
Derby v. Derby II-302, 756
v. Jackman II-244
Deringer v. Deringer II-240
Derry: Estate of I-134
Desilver: Estate of II-911
Desmond v. Fisher II-799
DeSobry v. DeLaistre II-225
Despard v. Churchill I-268, 443, III-136
Detreville v. Ellis II-361
Detroit, City of v. Schilling III-139
Detroit Fire &c. Insurance Co. v. Aspinall II-138
Detwiller v. Hartman II-675, 826
Deupree v. Deupree I-242
De Valengin v. Duffy I-574, III-137, 561
Devane v. Larkins II-536
DeVaughn v. McLeroy I-804, II-535
Deveaux v. Barnwell II-773
Devecmon v. Shaw II-541, 829
Devereux v. Devereux III-189, 191, 201
Devlin v. Commonwealth I-378, 678
Devling v. Little II-153
DeWald: Estate of I-154
DeWart's Appeal II-517, 757
Dewell: Estate of II-867
DeWitt v. Barley I-408
v. Cooper II-825
v. Schoonmaker III-583
v. Yates II-613
Dewey v. Dewey I-120, 126, 129
Dexter v. Arnold III-421
v. Cadman I-712
v. Gardner II-300, 307, 321
v. Inches II-388
v. Phillips II-482
Dey v. Codman II-195, 196, 197, III-372
v. Dey I-419. II-670. III-193, 194
v. Williams II-612
Dial v. Gary I-431. III-476
v. Tappan III-476
Dibble v. Woodhull II-253
Dick v. Pitchford II-574
Dicken v. Cotton II-825, III-187
Dickenson v. Barber I 407
Dickerson v. Dickerson III-280
v. Miller I-646
v. Robinson I-641, 642. III-473
v. Stokes II-620, 750
v. Stoll II-101
v. Wilcoxen III-586
Dickey v. Malechi I-212, 457, 460
v. Sleeper III-362
v. Vann I-464, 676
Dickie v. Carter I-23, 120, 126, 179
v. Dickie II-184, 865. III-359, 368
v. Turner III-424
Dickie v. VanVleck I-23
Dickinson's Appeal II-846, 912
Dickinson v. Calahan II-22, III-282
v. Dickinson I-86. II-361, 365, 783
v. Hoomes II-502
v. Lee II-360
v. Purvis II-500, 501
v. Seaver I-429
Dickison v. Dickison II-604, 825
Dickson v. Compton III-576
v. Crawley II-133
v. Dickson I-795. II-541, 823
v. Field III-202
v. Hitt III-423
v. Montgomery II-322
v. United States II-274, 560
v. Wilkinson III-583
Diehl's Appeal III-178
Dietrich v. Heft III-415
Dietrick: Succession of I-536
Diez: Matter of I-10
Dietz: Matter of I-563
Dietz's Case III-137
Dietz v. Dietz I-593
Diffenderffer v. Griffith I-397
v. Winder III-417
Dignowitty v. Coleman III-475
Dildine v. Dildine II-506, 792
Dill v. Wisner II-194. III-198, 508
Dillaby v. Wilcox III-315
Dillard v. Dillard I-392, 693, II-197
v. Harris I 432
v. Tomlinson III-414
Dille v. Webb II-898
Dilley v. Love II-891, 895
Dillingham v. Weston II-254
Dillman v. Barber II-232
v. Cox II-898
Dilts v. Parker I-306, 311
v. Stevenson II-182
Dilworth's Appeal II-139
Dingley v. Dingley II-344, 514, 535, 539
D'Invilliers v. Abbott II-153
Dismukes v. Tolson III-580
Dist. of Columbia v. Washington Market Co. II-317
Ditch v. Sennott II-780
Ditmar v. Boyle II-195. III-364, 422
Ditmas v. Baas II-559
Ditsche: Estate of III-654
Ditson v. Ditson II-863
Diversey v. Johnson III-217, 424
Dix v. Morris II-52. III-420, 422
Dixon: Appeal of I-183
Dixon v. Aldrich II-875
v. Buell II-251
v. Cooper II-513
v. Dixon II-75
v. McCue II-786
v. Ramage II-587
v. Ramsey III-563
Doane v. Hadlock I-183
Dobbins v. Halfacre I-647, III-353, 658
Dobson v. Butler I-531. II-876
Dobyns v. McGovern I-630
Dock v. Dock I-411
Dockery v. McDowell III-368
Dockum v. Robinson I-171
Dodd v. Winship II-540, III-376, 413
Dodds v. Rogers III 579
Dodge's Appeal II-881
Dodge: Matter of I 802
Dodge v. Cole III-377
v. Dodge II-779
v. Manning III-200
v. Pond I-800, 803
v. Stevens III-168, 170
v. Williams II-274, 315
Dodson v. McKelvey II-251
v. Taylor III-206, 208
Doe v. Atkinson II-431
v. Clark III-473
v. Considine II-533
v. Hicks I-229
v. Jackman II-353, 383
v. Kinney I-418
v. Lamins I-798
v. Pickett I-355
v. Provost II-344, 536
v. Reagan I-409
Doebler v. Snively III-394
Doggett v. Dill III-286
v. Mosely II-365, 377, 389
v. Slack II-348
Doherty v. Boyd III-174
v. Choate III-176
Dolis v. Dohs III-567
Dolan: Matter of II-670, 792
Dolbeer v. Casey II-232
Dole v. Johnson II-465, 700, 701
v. Stimson II-707
Doll v. Irish I-709
Dolman v. Clark II-268
v. Cook III-473
Dolson v. De Ganahl III-475
Dolton v. Nelson I-444
Domestic & Foreign Miss. Soc.'s Appeal II-285, 300, 306, 427, 827
Dominick v. Michael I-561
v. Moore II-537
v. Sayre II-406
Donahay v. Hall I-531, 575, III-178
Donahue v. Kendall III-352
Donald v. Mateer II-889
v. McWhorter II-172
v. Portis II-778
Donaldson v. Lewis I-678, 788
v. Raborg I-574. II-112, 161, III-375
Donegan v. Wade II-586
Donnat v. Jones III-319
Donnell v. Cooke II-851
Donner's Appeal II-519, 555
Donnington v. Mitchell I-530, II-75, 399
Donohue v. Daniel I-483
v. McNichol II-348
Donohugh's Appeal II-305
Donovan: Appeal of I-543
Doolan v. McCauley III-167
Dooling v. Hobbs II-370
Dorah v. Dorah II-869
Doran v. Mullen I-115, 354, 388, 411
Doremus: Matter of I-637
Dorland v. Dorland II-248, III-371
Dormer v. Thurland I-107
Dorr v. Comioth II-913
v. Wainwright I-564, 639, II-479, 700, 701. III-378
Dorries: Succession of I-117
Dorsey v. Dorsey II-476, 927
v. Hammond III-584
v. Sheppard I-168
v. Smithson I-305
v. Warfield I-119, 403, 404, 410
Dorsheimer v. Rorback III-655, 659
Dorst v. Corle III-285
Dortch v. Dortch III-364, 366
Doster v. Arnold III-367
Dott v. Wilson II-823
Doty v. Hendrix II-270, 287, 789
Doubleday v. Newton II-348
Dougherty: Estate of I-158
Dougherty v. Barnes II-789
v. Dougherty II-353
v. Rogers II-619
v. Stephenson III-282
Doughten v. Vandever II-272, 426

Doughty v. Stilwell II-633, 865, 912
Douglas v. Blackford I-229
v. Day II-159, 160
v. Fraser II-226
v. Hartrender I-148
v. Yost III-507, 509
Douglass v. Baker III-218
v. Feay II-779, 789
v. Folsom II-240
v. Haviland I-653
v. Hennessy III-139
v. Leonard III-312
v. McCann III-470, 471
v. Murray III-397
v. Rader III-197
v. Satterlee III-583
v. Snow III-581
v. Stephenson III-358
Dove v. Torr II-341
Dow v. Doyle II-506
Dowd: Matter of I-239
Dowell v. Tucker III-575
Dower v. Church III-657
v. Seeds I-193, 209, 458, 462
Dowle: Estate of III-284
Dowley v. Graham I-704
Dowling v. Feeley III-412
Downer v. Downer II-560
Downey v. Downey I-386
v. Murphey I-133
Downie: Will of I-131
Downie v. Knowles II-185
Downing v. Bain II-756
v. Marshall II-320, 321, 323, 341, 507, 510, 827. III-219
v. Risley III-513
Dowty v. Hall II-114
Doyal v. Smith I-417
Doyle: Estate of I-712
Doyle v. Martin II-869
v. Wade III-472
Drake: Appeal of I-57, 164
Drake v. Coltraine II-211
v. Drake III-359, 368, 507
v. Foster II-244. III-584
v. Green I-277, 703
v. Lawrence II-534
v. Paige III-395, 397
v. Pell II-347, 410, 517
Drakeford v. Drakeford II-507
Drane v. Baylis I-705. III-378
Draper v. Barnes III-182, 207
v. Harvard College II-271. 285
v. Jackson I-827. II-74. III-180
Drayton's Appeal III-3
Drayton: Will of I-293. 295, II-111
Drayton v. Drayton II-344, 587, 823
v. Grimke II-563
Drenkle v. Sharman II-114
Drew: Appeal of I-539
Drew v. Gordon II-872
v. McDonald III-221
v. Simmons III-580
v. Wakefield II-300, 302, 303, 395, 579, 829
Drexel v. Berney I-708
Dreyfuss v. Giles II-239
Drinkhouse: Estate of I-34
Drinkwater v. Drinkwater III-217
Drischler v. Van Den Henden I-175, 242
Drowne: Matter of II-825
Drowry v. Bauer II-874
Drummond v. Jones I-565
Drury v. Natick I-369. II-300, 305
v. Negro Grace II-588
Dryden v. Owings II-443
Dryer v. Graham I-576
Dryfoos v. Cullinan III-446
Dublin v. Case II-306
v. Chadbourne I-677, 680
Dubois v. Dubois III-559
Duchos v. Benner II-481
Duckworth v. Butler II-648
Ducommun's Appeal III-397
Dudgeon v. Dudgeon III-191
Dudley v. Bosworth II-894
v. Mallery II-355
v. Steele III-580
v. Wardner I-207
Dudleys v. Dudleys I-120
Duffee v. Buchanan II-626
Duffield v. Morris I-22, 30, 40, 163, 166, 410
Duffue v. Bangs I-868
Duffy: Estate of III-203, 660
Duffy v. Duffy I-799
v. State III-511
Dugan: Estate of II-214
Dugan v. Gittings II-896
v. Hollins II-648. III-216, 217, 220
Duggen v. McBreen I-413
Dugger v. Oglesby III-570
v. Taylor III-513
v. Wright I-634
Duke v. Duke II-73
v. Fuller II-303
Dulaney v. Middleton II-320, 346, 536, 826
Dull: Estate of II-621
Dull v. Drake I-611
Dullard v. Hardy III 373
Dumey v. Sasse II-588
Dumont v. Dumont I-12, 54, 64
Dun v. Brown I-458
Dunbar v. Dunbar I-897. II 560
Duncan: Matter of I-612, III 442
Duncan v. Barnes III-411
v. Clay II-648
v. Davison III-394, 395, 397
v. Dent III-415
v. Dick II-784
v. Duncan II-779, 781, 783, 786, III-507
v. Eaton II-867
v. Franklin Township II-669, 675
v. Gainey III-180, 204
v. Henry II-892
v. Phillips II-588
v. Prentice II-547
v. Stewart I-678, 699
v. Thomas II-241
v Veal I 545
v. Wallace III-193
v. Watson II-113
Dundas: Appeal of I-543, 800, 805
Dundas v. Carson III 472
v. Chrisman III 373
Duney v. Schœffler II 588
Dunford v. Weaver I-722
Dunham: Appeal of I-410
Dunham: Matter of III-571, 572
Dunham v. Averill I-221, 229, 424, 425, 426
Dunham v. Elford II-684
Dunlap v. Dunlap I-253. II-496, 510. III-217, 578
v. Ingram II-825
v. McFarland I-431
v. Mitchell II-140
v. Mobley III-580
v. Shreve II-362
Dunlop v. Dunlop I-104, 179
Dunn: Estate of II-325
Dunn: Ex parte II-869
Dunn: Matter of I-398. II-213, 246
Dunn v. Amey III-219
v. Bank of Mobile II-358
v. Barnes III-584
v. Bryan II-823, 824
v. Campbell II-196. III-422
v. German American Bank I-535
v. Keeling I-798
v. Renwick I-799
v. Sargent I-827. II-74, 537, 541, 732
Dunne: Estate of II-226. III-418
Dunne v. Deery II-226. III-314, 581
v. Dunne III-202
Dunnell v. Providence I-648
Dunnigan v. Stevens II-250
Dunning v. Ocean National Bank I-336, 564, 819. II-162, III-184, 513
Dunscomb v. Dunscomb III-416
Dunshee v. Galdbacker I-799
Dunson v. Payne II-226
Dupoyster v. Gagani I-888
Dupre v. Thompson II-527
Durant v. Ashmore I-208, 418, 457
Durfee: Matter of II-786
Durfee v. Abbott I-626. III-410
v. Durfee I-458
Durham: Estate of II-138
Durham v. Durham I-635
v. Rhodes III-220, 221
v. Shannon III-579
v. Williams I-796
Durrie v. Blauvelt I-311, 432
Durscheidt: Matter of II-874
Duryea v. Duryea I-238
Duson v. Dupie I-676
Dustan v. Carter II-750
v. Dustan II-561
Dutch's Appeal II-893
Dutch Church v. Ackerman II-758
Dutton v. Pugh I-802. II-539
Duvall: Estate of III-185, 202
Duvall v. Goodson I-149
v. Harwood II-912
DuVall v. Marshall I-444, 445
Duvernois v. LeBlanc III-424, 652, 656
Dwight v. Newell II-153
Dwyer v. Kalteyer III-319, 443
Dye v. Gritton I-430
v. Young I-425
Dyer v. Brannock II-888
v. Dyer I-21, 127
v. Hopkins III-580
v. Jacoway I-356
v. Riley III-394
v. Walls III-568
Dykes v. Woodhouse II-102
Dyott: Estate of III-416
Dyre: Estate of I-22

E.

Eagle v. Emmet I-546
Eames v. Brattlebon II-28
Ean v. Snyder I-23, 24
Eans v. Eans II-782. III-510
Earl v. Grim II-478
Earl v. Norfolk & New Brunswick Hosiery Co. I-63
Earle v. Dawes II-887
v. Earle I-335. III-369, 396, 397
v. Harrison III-582
Earp: Will of II-50
Easley v. Barksdale III-655
East Carolina &c. v. North Carolina II-431
Eastham v. Powell II-892

Eastman v. Allard II-305
Easton v. Curtwright III-317
East Tennessee &c. R. R. v. Lilly II-30
Eastwick: Estate of II-481
Eaton v. Benton I-420. II-612. III-280
v. Buswell II-242
v. Walsh II-626. III-133
Eavenson's Appeal III-412
Eberhardt v. Perolin II-757
v. Schuster II-720
Eberstein v. Camp II-457, 682, 684
Ebert v. Gerding III-580
Eby's Appeal II-384
Eby v. Eby II-382
Eccard v. Brush III-578
Echols v. Almon II-852
v. Barrett I-701
Eckert v. Flowry I-64, 65
v. Myers III-396
Eckfeldt: Estate of II-448, 756
Eckford v. Knox II-887
Eddings v. Long II-381
Eddins v. Graddy II-242
Eddy: Estate of III-173
Eddy: Matter of I-47, 58, 450
Eddy: Will of I-59
Eddy v. Hartshorne I-161, II-510
Edelen v. Dent II-612
v. Edelen II-194. III-320, 373
v. Hardey I-131, 132
v. State III-221
Edes v. Garey I-650. III-654
Edgar v. Shields II-800
Edmonds: Estate of I-704
Edmonds v. Crenshaw III-394
Edmonson v. Phillips III-221
Edmunds v. Scott II-653, III-188, 215, 219, 375
v. Rockwell III-168
Edney v. Bryson II-680
Edsall v. Waterbury II-792, 846
Edson v. Edson I-710
Edward v. Williams II-850
Edwards: Appeal of I-237, 242, 245, 803
Edwards: Succession of III-441
Edwards v. Barksdale II-912
v. Bibb II-390
v. Bruce I-332
v. Cobb I-481, 698
v. Edwards III-423
v. Gibbs II-254, 534
v. Halbert III-170
v. Kilpatrick III-472
v. Love III-585
v. McGee II-869
Eells v. Holder II-926
v. Lynch II-541
Effinger v. Hall I-467. III-571
Egan v. Grece III-177
Egbert v. Egbert I-23. II-864
Egerton v. Egerton I-897. III-280, 373
Eggers v. Eggers I-411
Ehlen v. Ehlen I-539. 701
Ehrenberg: Succession of I-149
Eichelberger: Estate of II-645
Eichelberger v. Barnitz II-694
v. Morris II-625
Eidenmuller: Estate of II-249
Eighmy v. People I-207
Eisman v. Poindexter II-384
Eisner: Matter of II-249
Eisner v. Koehler II-562, 645, 710
Ela v. Edwards I-78, 411. III-136
Elbert v. O'Neil II-791
Elder v. Bales II-918
v. Littler I-319
v. Ogletree I-421. II-491
Eldridge v. Bell III-477
v. Eldridge II-517, 537
Eley's Appeal II-480
Elfe v. Cole II-868
Elias: Matter of III-509
Eliott v. Sparrell II-755, 756, III-416, 418
Eller v. Lillard II-646
Ellicot v. Chamberlain I-323
Ellicott v. Walsh III-207
Ellingwood v. Beare II-482
Elliot v. Bent II-281
v. Carter II-823. III-196, 215, 217, 219
v. Whedbee III-132
Elliott v. Branch Bank II-126
v. Elliott II-364
v. Fessenden II-513
v. Frakes III-180
v. Pollitzer III-479
v. Posten III-217, 220
v. Shuler III-172
v. Welby I-114, 116, 129
Ellis v. Alford III-579
v. Appleby III-480
v. Carlisle II-242
v. Ellis I-157
v. Essex Bridge Co. II-382
v. Fairbanks II-493
v. Johnson I-640
v. McBride I-635
v. Meadows I-155. II-432
v. Merriman III-315
v. Page II-281, 385
v. Smith III-477
v. Witty I-624, 631, 633
v. Wren I-593, 594
Ellison v. Miller I-265
Ellissen v. Halleck II-239
Ellmaker: Estate of I-529, 539, 563, 594
Ellsworth v. Thayer II-254
Ellwood v. Northrup II-268
Elmendorf v. Lansing I-275. III-652, 657
Elmer v. Gray III-377
v. Kechele I-277
Elrod v. Alexander II-28. III-287
Elstner v. Fife I-565, 566. III-201
Elsworth v. Hinton III-423
Eltinge v. Hull II-850
Elwell v. Convention II-427
v. Prescott I-646, 648, 653
v. Universalist Church I-721
Ely v. Clute III-581
v. Ely II-563
Emans v. Hickman II-172
Embley v. Hunt I-712
Embree v. State I-650, 653
Emeric v. Penniman II-23
Emerich v. White III-206, 207
Emerson v. Bowers I-540, 703
v. Cutler II-348, 518, 538, 539, 822, 823
v. Ross I-484
v. Thompson II-154. III-577
Emery: Appeal of I-237, 238
Emery: Estate of I-625
Emery v. Batchelder II-663
v. Berry I-298, 302, 306, 316
v. Hildreth I-338, 349, 676
v. Wason II-472, 476
Emmert v. Stouffer I-700
Emmons v. Cairns II-520
v. Garnett I-87
Emory v. Thompson II-183
Emson v. Ivins II-246
Enders v. Enders II-441, III-198
Engel v. State II-541, 854
England v. Prince George II-453
Engle v. Crombie II-159, 160, III-665
Englehart v. Young II-867
English v. English II-781, 783
v. Harvey III-417
v. McNair I-273, 539
v. Newell III-397
Engs: Estate of III-361
Engs: Matter of III-423
Ennis v. Pentz II-885
v. Smith II-925
Ensign: Matter of I-531. II-65[illegible], 865
Enston: Matter of III-3
Eoff v. Thompkins III-183
Epperson v. Hostetter III-575
Epping v. Robinson I-483, 600, 677
Eppinger v. Canepa II-195. III-183, 446
v. Richards III-442
Epting: Ex parte III-571
Equitable Life Assur. Soc. v. May III-122
v. Vogel I-429, 436
Erickson v. Willard I-156
Erie Dime Savings and Loan Co. v. Vincent III-371
Erlacher: Matter of II-171, 172
Erne v. Pittman I-458
Ernst v. Nau I-642. II-298
Erskine v. Whitehead II-302
Erwin v. Hill I-722
v. Loper II-234
v. Turner II-245
Escarraguell: Succession of III-179
Eschbach v. Collins I-162
Escobel: Succession of I-117
Eskridge v. Farrar III-202
Esmond v. Brown I-488. II-716, 751
Espalla v. Richard III-561
Estep v. Armstrong I-604
v. Morris I-119
Esterly: Appeal of I-546
Estes v. Howland III-510
Estill v. McClintic II-135
Esty v. Clark II-395
Etter v. Greenawalt III-202
Eubank v. Clark II-159, 160. III-355, 360, 414
Eubanks v. Dobbs II-27
Eustace v. Johns II-237
Eustis v. Parker I-117
Eutaw Church v. Shively II-372, 306
Evangelical Assembly's Appeal II-321
Evans: Appeal of I-800, 806. II-781, 913
Evans: Case of I-184
Evans: Estate of II-765. III-366, 413, 416
Evans: Matter of I-710
Evans v. Anderson I-245
v. Beaumont II-648, 653. III-185
v. Brittain II-822, 824
v. Buchanan I-708
v. Chew I-565
v. Davis II-541, 547
v. Evans III-512, 657, 659.
v. Fisher III-174
v. Foster II-750, 757. III-202
v. Godbold II-349, 351
v. Gordon II-85
v. Halleck II-227. III-175
v. Hardman II-237
v. Hardy III-182
v. Harllee II-384
v. Hooper II-424
v. Hunter II-443
v. Inglehart I-843. II-453, 457. 700, 755
v. Kingsbury I-803
v. Nealis II-101
v. Opperman II-461
v. Pierson II-864
v. Price II-794
v. Stewart I-546
v. Smith I-10. III-414
v. Webb II-357
Everett v. Avery II-215

Everett v. Carr II-675
v. Maymire I-652
v. Mount II-528
Everhart v. Everhart III-656
Everingham v. Vanderbilt II-136
Everitt: Matter of III-139
Everitt v. Lane II-437. III-216
Everton v. Tappen III-419
Ewell v. Tidwell I-692
Ewen v. Perrine I-59, 64
Ewing v. Griswold II-235. III-476
v. Handley II-360, 362
v. Maury II-253. III-178
Exchange &c. Bank v. Stone II-780, 790
Eyre's Appeal III-199, 202
Eyre v. Golding II-754
v. Jacob III-1
Eyrich v. Capital State Bank III-565
Eysaman: Matter of I-405
Eysler: Estate of I-561
Ezell v. Hamilton I-640

F.

Fabens v. Fabens II-709
Fagan v. Dugan I-59
v. Jones II-437, 461
Fahnestock v. Fahnestock I-805
Fahs v. Fahs II-588
Fair v. Trustees I-794
Fairbairne v. Fisher I-624
Fairbanks v. Hill I-580
v. Lamson II-305
v. Robinson II-868
Fairchild v. Hagel I-431
v. Marshall II-786
Fairfax: Estate of II-563, 566
Fairfax v. Brown II-537
v. Fairfax I-625
v. Hunter II-273
Fairfield v. Lawson I-425. II-317, 324, 427
Fairly v. Kline I-802. II-535
Fairman's Appeal II-171, 172
Falk v. Jones III-356
Falkner: Matter of I-316
Fall v. Simmons III-417
Fallon v. Chidester I-245, 354, 674
Faran v. Robinson III-177, 179
Fargo v. Miller II-350, 398
Faribault v. Taylor II-346, 354
Farie: Appeal of I-886
Faris v. Dunn II-780
Farish v. Cook II-465, 469
Farley v. Dunklin III-170
v. McConnell I-633, 676
Farmer v. Husse I-533
v. Sprague I-386
Farmer's Bank v. Hooff II-535
Farnam v. Farnam II-345, 411, 516, 519, 606
Farnham v. Barker II-611
v. Brooks II-132
Farnsworth: Matter of I-54
Farnum: Estate of II-899
Farnum v. Bascom II-442, III-219
Farquharson v. Nugent III-439
Farra v. Adams III-191, 199
Farrand v. Caton I-676
Farrar v. Ayres I-418
v. McCue II-540
Farrars: Ex parte II-212
Farrel v. Brennan I-410
Farrell v. Leighton I-389
Farrelly v. Ladd II-182
Farrington v. American Loan & Trust Co. I-430
v. King III-175, 176
Farris v. Stoutz II-238. III-573, 575
Farrow v. Farrow II-732
Farwell v. Jacobs I-565. III-558
v. Tweddle III-413
Farys v. Farys II-625
Fauber v. Gentry III-357, 361
Faulkner v. Faulkner III-474
v. National Sailors Home II-426
Favorite v. Borker III-575, 576
Faxon v. Dyson III-315
Fay: Will of I-710
Fay v. Fay III-181
v. Haven II-926. III-137
v. Holloran II-50
Fay v. Muzzey II-112
v. Rogers I-646
v. Taylor III-178
v. Sylvester II-534
Featherstone v. Richardson III 511
Feemster v. Good II-352. III-217
Fehlinger v. Wood III-315
Feig v. Wray II-86
Feit v. Vanatta II-346, 359
Felch v. Taylor III-199
Fell: Estate of III-412, 421
Fellows v. Allen I-207, 238, 242
v. Lewis III-651, 656
v. Little II-895, 896, 897
v. Miner II-274, 303, 323
v. Smith II-868
Feltman v. Butts II-382
Felton v. Sawyer II-519
v. Sowles I-624, 626
Feltz v. Clark I-628, 705
Fenix v. Fenix III-176
Fennell v. Henry II-894, 898, 899
Fenner v Manchester II-234, 235
Fennimore v. Fennimore III-394, 397
Ferbrache v. Ferbrache III-580
Ferebec v. Dorcey II-627
Ferguson v. Barnes III-471
v. Broome III-219
v. Carson III-176
v. Epes III-368
v. Hedges II-285. 827
v. Mason II-365
v. Morris I-429. III-359
v. Scott III-175
v. Stuart I-800, 806. II-380
Fern v. Leuthold II-242
Fernbacher: Estate of I-710, III-667
Fernbacher: Matter of I-706
Fernbacher v. Fernbacher II-706
Ferrall v. Irwin II-246
Ferrand v. Walker III-565
Ferrea v. Chabot I-238
Ferrin v. Myrick II-171, 172, III-562, 584, 585
Ferris v. Burrows II-619
v. Ferris I-711
v. Van Vechten III-220
Ferry v. Fountain III-512
Ferson v. Dodge II-514, 535
Fesmire v. Brock II-51
v. Shannon II-153
Fessenden's Appeal II-197
Fessler v. Crouse I-311
Feters v. Volmer I-462
Fetherly v. Waggoner I-212, 458
Fetrow: Estate of II-536
Fetrow v. Fetrow I-843
Fickes v. Wireman II-899
Fidelity Insurance &c. Co. v. Niven I-270
Fidelity Trust Co.: Appeal of I-237. III-370
Fidler v. Higgins III-178
Field: Appeal of I-406
Field v. Apple River Co. I-385
v. Colton III-414, 419
v. Eaton I-418
v. Field II-244
Field v. Gibson I-311, 432, 612, III-515
v. Hallowell II-585
v. Hitchcock III-665
v. Torrey II-114
v. Van Cott I-629, 658
Fielder v. Childs III-173
Fields v. Wheatley II-199
Fiester v. Shepard II-432. III-666
Figueira v. Taafe I-57
Filley: Matter of I-631
Filley v. Phelps I-793
Fillyan v. Laverty II-236. III-286
Finch v. Finch II-135. III-368
v. Hull III-193
v. Ragland II-154. III-414, 474
Findlay v. Riddle II-382
v. Trigg III-378
Findley v. Gidney II-210. III-136
v. Smith III-416
Fine v. Freeman III-188
Fink v. Fink II-303, 313
Finley v. Bent II-517, 519, 564, 579
v. Hunter II-565
v. King II-579, 583, 589
Finn v. Boles I-793
Finnegan v. Finnegan III-471
Finnern v. Hinz III-582
Finney's Appeal II-874
Flott v. Commonwealth I-13
Fire Ins. Patrol v. Boyd II-307
First Baptist Church v. Robberson II-301, 426. III-507
First Congregational Soc. v. Pelham II-564, 566, 579
First National Bank v. Balcom I-677
v. How I-626, 642, 649. II-249
First Presb. Soc. v. Bowen II-271
First Unitarian Soc. v. Harrison II-181
Fischer v. Fischer I-430. II-927
Fiscus v. Fiscus II-849
Fish: Estate of II-212, 750, III-185
Fish v. Coster I-564, 565
v. Miller I-67
Fisher: Estate of II-360
Fisher: Matter of I-214, 562, 612, II-828
Fisher: Will of I-352
Fisher v. Allen III-285
v. Banta III-651
v. Beal II-27
v. Fisher I-415, 817, 818, III-187, 372
v. Fuller III-206, 573
v. Johnson II-518
v. Kimball I-72
v. Metcalf III-569
v. Skillman III-372, 395
v Verplanck III-582
v. Wister II 825
Fishwick v. Sewall III-564
Fisk v. Cushman II-760
v. Jenewein III-205, 206, 573
v. Norvel I-592
Fiske v. Cobb II-694
Fitch v. Peckham II-610
v. Witbeck III-170, 175

Fite v. Beasley II-826
Fithian: Estate of I-796
Fithian: Matter of III-411, 421
Fitzgerald v. Glancy III-175
Fitzhugh v. Fitzhugh III-312
v. Hubbard II-776
Fitzpatrick v. Fitzpatrick I-418
Fitzsimmons' Appeal III-180
Fitzsimmons v. Cassell II-214
v. Johnson III-423, 559
Five Points House of Industry v. Amerman II-560
v. Cornell II-572
Flagler v. Blunt III-652
Flaherty: Estate of II-302, 306
Flanagan v. Flanagan I-804
Flanders v. Flanders II-140
v. George III-217
Flandrow: Matter of I-598
Flannery: Will of I-103
Fleck: Estate of II-501
Fleece v. Jones I-639. II-846, III-375
Fleet v. Hageman I-832
v. Simmons I-706
Fleiss v. Buckley II-282
Fleming v. Carr II-755. III-192
v. McKesson III-512
Flenner v. Benson III-180
v. Traveler's Ins. Co. III-173, 179
Fletcher v. Fletcher I-712
v. Weil II-102
v. Wormington III-181, 204
Flickwir: Estate of II-696, 753, 754
Flinn v. Barber II-289
v. Chase I-676, 678, 708
v. Flinn II-518, 519, 723
v. Shackleford I-543
Flint v. Valpey II-252
Flintham's Appeal II-170, 171, III-415
Flintham v. Halder II-913
Flippin v. Bauner II-773, 777, 778
Flitner v. Hanley II-172, 253
Flogg: Matter of II-753
Flogg's Case II-254
Flood: Matter of II-250
Flood v. Pilgrim III-182
v. Pragoff I-64, 95, 107, 108, 118
Flora v. Mennice I-593
Florence: Will of I-207
Florence v. Sands II-440, 676
Florey v. Florey I-41, 54, 61, 410
Florsheim v. Holt III-320
Flournoy v. Flournoy I-265, II-502
Flower v. Garr III-479
Floyd v. Barker II-506, 830
v. Carow II-829
v. Clayton I-721. II-240
v. Floyd I-242, 398, 709. III-218
v. Herring I-721
v. Johnson II-154
v. Wallace III-582
Fluke v. Fluke I-265, 802
Flummerfelt v. Flummerfelt II-753
Flynn v. Diefendorf III-568
v. Mass. Benev. Ass'n II-22
Foglesong v. Wickard III-470
Foland v. Dayton III-561, 585
Foley v. Bushway II-171. III-580
v. Foley II-541
Foltz v. Prouse I-707. II-50
Fonda v. Chapman III-179
Fontaine v. Thompson II-315
Fonte v. Horton III-395
Foose v. Whitmore I-157
Foote's Appeal II-443
Foote: Appellant II-50
Foote: Matter of III-131
Foote v. Bruggerman III-442
v. Foote I-379, 380. II-251
Forbes: Matter of I-66, 416
Forbes v. McHugh I-640, 649
Forbing v. Weber I-198, 210
Ford: Estate of II-867, 868, 900
v. Blount II-140
v. Cobb I-67
v. Ford I-23, 134, 150, 174, 193, 199, 800, 804. II-438, 633, 795
v. Gaither III-189, 192, 220
v. Holmes III-581
v. O'Donnell II-850
v. Smith II-236
v. Talmage III-667
v. Teagle I-458, 462
v. Thornton III-477
v. Walsworth III-176
v. Whedbee II-516, 544
Forde v. Exempt Fire Co. III-510, 513
Fordyce v. McCants II-34
Forester v. Watford II-790
Forman: Matter of I-45, 128
Forman: Will of I-34, 36, 39, 40, 193, 199
v. Marsh III-184
v. Smith I-66, 68
Forney v. Shriner I-712
Forniquet v. Forstall II-112, 113
Forrester v. Forrester I-531
Forstall v. Forstall I-795
Forster v. Covill III-193
Forsyth v. Barr II-181
v. Forsyth I-804. II-583
v. Ganson II-154. III-582
v. Mintier II-482
v. Rathbone I-800, 802
Fort v. Blagg III-567
v. Edwards II-775. III-189
v. Gooding II-612
Fortescue v. Satterthwaite II-360
Fortier: Appeal of I-209
Fortune v. Buck I-674. II-221
Forward v. Forward III-374, 415
v. Thamer II-574
Foscue v. Lyon III-358, 359, 367
Fosdick v. Allen II-344
v. Delafield I-269, 282, 293
v. Hampstead II-275, 276, 317
Fosher v. Guilliams II-778
Foskett v. Wolf III-375
Foss v. Crisp I-13
v. Sowles I-626, 705, 722. II-161
Foster: Appeal of I-208, 456, 457, 460
Foster: Estate of I-57
Foster: Matter of II-786. 790
Foster: Will of I-457, 459. III-365
v. Bailey II-161. III-411
v. Collner III-579
v. Crenshaw III-207, 208, 219
v. Fifield II-844, 865
v. Foster II-867. III-658
v. Hollander II-238, 528
v. Hooper III-285
v. Knowles III-655
v. Stone II-212
v. Thomas II-135
v. Tifield III-131
v. Wetherill II-537
v. Wise I-634, 649. II-160
Fosworth v. White III-656
Fouke v. Kemp I-424, II-362
Foulke: Estate of II-361
Fountain v. Revenal II-300, 319
Fourth Ecclesiastical Soc. v. Mather II-75
Fow: Estate of II-440
Fowke v. Kemp I-418
Fowle v. Lovet II-27
Fowler v. Colt II-170. 709. 723, III-367, 446
v. Depau I-808, 804
v. Kell I-530
v. Lockwood I-856, 896. II-195, 197
v. True III-138. 207, 660
v. Walter I-545, 561, 562, 563
Fowlkes v. Nashville, &c. R. R. II-33
Fox: Appeal of I-157. II-195
Fox: Estate of II-213
Fox: Matter of II-803
Fox: Will of I-798
v. Carr III-476
v. Ferguson II-795
v. Fox I-191
v. Phelps II-558, 561
v. Rummery II-793
v. Senter II-461. 705
v. Southback I-13. II 273
v. Tay I-433, 436. III-134, 573, 579
v. Van Norman I-299
v. Wilcox III-415
Foxworth v. White III-177, 319
Fralich v. Moon III-173
Frame v. Willets II-825. III-412, 442
Frampton v. Blume III-199
France: Estate of II-172. III-313, 353
Frank v. Frank II-441, 444, 700
Frankenfield v. Gruver II-911
Franklin v. Armfield II-300, 304
v. Franklin II-383
v. Low III-287
Franklin County v. McIlvain I-649
Fransen: Case of I-237
Fraser v. City Council II-251
v. Jennison I-11, 21, 36, 42
v. McNaughton I-808
v. Page III-507
v. Passage III-512
Frazer: Matter of II-469. III-373
Frazer v. Alexander II-465
v. Berrill II-680
v. Trustees I-805
Frazier: Succession of I-623, 722
Frazier v. Frazier II-507, 830. III-368
v. Praytor II-344
v. St. Luke's Church II-322
Frear v. Williams I-161
Fredericks v. Cisco III-472
v. Gray II-564, 566
v. Isenman III-208
Freedley: Appeal of I-159
Freeland v. Dazey III-656
Freeman v. Colt II-170
v. Dutcher II-102
v. Easly I-12, 24, 46
v. Freeman II-53. III-417, 439, 444, 506, 560
v. Hamilton I-412
v. Holt II-244
v. Kellogg I-624, 708
v. Knight II-381
v. Scofield III-517
v. Worrill I-534
French v. Davis III-576
v. French I-148. III-582
v. Mehan I-794
v. Merrill II-27. III-479
Frend: Matter of I-711
Fretmore v. Peck III-197
Fretwell v. McLamore II-238, III-572
Frew v. Clarke I-9, 153, 154, 404. II-281
Frey: Estate of III-443
Frey v. Demarest III-558, 655, 656, 659
v. Frey III-366, 415, 445
v. Heidt II-897
Frick: Appeal of I-539, 703, 709
Frick v. Lewis III-423
Fridenburg v. Wilson I-798
Friedlander v. Ryder I-866
Frierson v. General Assembly II-307, 322
v. Van Beuren II-539
Frink v. Taylor II-33
Frisby v. Withers I-288, 564

Fritz v. McGill III-352
v. Thomas III-576
v. Turner I-114
Frost: Matter of II-829
Frost v. Denman III-446
v. Libby III-470, 471, 510
Froust v. Bouton II-24
Frowert: Estate of I-46
Fry v. Evans III-477, 479
v. Smith II-830, 855
Frye v. Crockett I-629, 648
Fudge v. Durn III-363
Fugate v. Bronaugh III-475
v. Moore I-430, 438
Fuguet: Will of I-162
Fuhrer v. State I-641, 648. III-557
Fulketson v. Chitty II-472
Fuller's Appeal II-25
Fuller's Will II-313, 324
Fuller v. Connelly III-424
v. Fuller I-117. II-528
v. Lendrum III-581
v. Plainfield Academy II-304
v. Winthrop II-544
v. Yeates II-779, 787
Fulton v. Davidson III-436, 443
v. Fulton II-787
v. Harmon III-204
v. Moore II-773, 774, 782
Fulton v. Shaw II-574
Fultz v. Brightwell III-412
Fuqua: Succession of I-147
v. Dinwiddie III-580
Furguson v. Stuart I-800, 806
Furlong v Riley III-169
Furlow v. Merrell II-352
Furman v. Coe III-363
v. White II-382
Furness v. Fox II-519
Furth v. Wyatt II-227
Fusilier: Estate of I-123
Fyer v. Charleston Rice Milling Co. I-433
Fyock: Estate of II-876

G.

Gable v. Daub I-265
Gaboney v. McGovern II-346
Gaddy v. Butler I-331
Gafney v. Kenison II-304, 314
Gaffney v. Public Administrator III-138
Gaillard v. Bordelon I-650
v. Thomas III-505
Gainer v. Gates II-795
Gaines v. Alexander III 582
v. Chew I-673, 677, 692, 698
v. Del Campo II-236
v. Fender I-680
Gainey v. Sexton II-212
Gains v. Gains I-179, 184, 189
v. Reutch III-436
Gaither v. Gaither I-67, 709
Galbraith v. Commonwealth III-5
v. McLain II-900
Galbreath v. Everett III-652
Gale v. Drake II-461, 489
v. Ennis III-474
v. Gale II-789
v. Nickerson I-386. III-470
Gall: Matter of I-238
Gallagher's Appeal II-795, III-193, 220
Gallagher v. Filkeary I-130
v. Gallagher II-440 632
v. Rowan I-803, 804. II-317, 827
Gallaher v. Redmond III-218
Galland: Estate of III-476
Gallego v. Attorney-General II-272, 301, 317, 324, 658, 800
Gallen: Estate of II-287
Galloway v. Bradfield II-212
Gallup v. Gallup III-564
v. Wright II-425
Gambell v. Trippe II-324
Gambill v. Campbell I-636, 639
Gamble v. Whitehead III-580
Gammage v. Noble II-851
Gangwere: Estate of I-26
Gannaway v. Tarpley I-418
Gannon: Matter of I-415
Gannon v. Ruffin III-563
Gans v. Dabergott I-533. 545
Gansevoort v. Nelson II-241
Gantert: Matter of III-180, 204
Garaschi v. Lewis II-237, 245
Garber: Estate of I-563
Garber: Matter of I-536
Gardener v. Hyer II-424
Gardenhire v. Hines II-880
Gardenville Ass'n v. Walker III-192
Gardiner v. Gardiner I-58, 63
v. Guild II-588
v. Guller II-341
Gardner; Matter of II-267
Gardner v. Callaghan II-231, 282
v. Clarke III-131
v. Gantt I-362, 705. III-559
Gardner v. Gardner I-196, 227, 897. II-182, 559. III-355
v. Garrett II-680
v. Harden II-707
v. Heyer I-418. II-364, 365
v. Hooper II-540
v. Lamback I-34
v. Printup II-343, 442, 506
Garasche v. Priest III-369
Garfield v. Bemis II-246
Garibaldi v. Jones III-179
Garland v. Garland I-444. II-559
v. Harrison II-913
v. Rowan II-926
v. Rowland II-784
v. Smiley II-716. III-201
Garlick v. Patterson I-819
Garlock v. Vandevort III-508
Garner v. Graves II-74
Garnett v. Carr III-415
v. Carson III-665
v. Macon II-136
Garniss v. Gardner III-417
Garr v. Harding III-373
Garrand: Estate of I-244, 420
Garret v. Bicknell III-172
v. Rex II-478
v. Stilwell I-575
Garrett's Appeal II-643
Garrett v. Garrett III-489
v. Scouton II-584
v. Wheeless II-491
Garrison v. Blanton I-46
v. Cox I-380, 582, 633, 701
v. Garrison I-410
Garter: Matter of I-589
Garthwaite v. Lewis II-823, 830
Gartside v. Gartside I-702
Garvey v. McCue III-422
Garvin v. Williams I-67
Gary v. James III-288
v. People's Bank I-796
Gaskins v. Gaskins II-754
Gass v. Gass I-39
v. Ross II-424
v. Wilhite II-300, 307
Gassman: Estate of II-669
Gaston v. Boyd II-248
v. McKnight II-240
Gates v. Clark I-703
v. Hunter I-800
v. Whetstone II-152. III-354, 394
Gatfield v. Hanson I-488
Gaultney v. Nolan III-397
Gaunt v. Tucker III-359
Gause v. Walker III-586
v. Wiley III-199
Gaven v. Allen I-680
Gavin: Estate of I-484
Gaw v. Huffman II-226. III-190
Gay: Petition of II-132
Gay v. Gay I-179, 241. 243
v. Grant III-357
v. Lemle I-313. II-216
Gay v. Louisville II-235
v. Minot I-350, 700
v. Skeen III-586
Gayle v. Johnston II-50, 169, III-170, 176
Gaylor: Appeal of I-129
Gazley v. Cornwell II-886
Geddis v. Irvine III-560
Geer v. Winds I-420, 426, 492
Gehrke v. The State I-407
Geiger v. Kaigler II-248
Gelbach v. Shively II-441, 676
Gelbke v. Gelbke I-213
Gelston v. Shields II-364
Gen. As. Presb. Ch. v. Guthrie II-270, 427
Genet v. Tallmadge II-717
Gent v. Gray II-27
Gentner v. Freemasons II-462
Gentry v. Jones I-319
George v. Baker II-153
v. Bussing I-72, 77. II-773, 782
v. Braddock II-282, 307
v. Elms I-636, 647. III-470, 471
v. George II-571
v. Goldsby II-73, 680
v. Green I-5, 94
v. Greer I-380
v. McMullin III-199
v. Van Horn II-26
v. Watson I-352
Georgetown College v. Brown I-270, 531, 563
Georgia Home Insurance Co. v. Kinnier III-139
Georgia Infirmary v. Jones II-437, 440. 633
Gerard: Matter of II-755
Gerard v. Buckley I-799
v. Jones II-86
Gere v. Clark III-285
Germain v. Baltes II-286
German v. German II-705
German Bank: Matter of III-176
German Bank v. Leyser III-511
German Savings &c. Society v. Fisher II-239
v. Hutchinson II-241
Gerould v. Wilson I-633, 722
Gerrish v. Nason I-133
Gerry: Matter of II-481. III-413
Gerz v. Weber III-579
Gescheidt v. Drier I-897
Gest v. Flock II-518, 535, 546, 774, 782
v. Way II-389
Getman v. McMahon II-436, 457, 705
Getzander v. Caylor II-51
Gharkey: Estate of I-144
Gheer v. Osborne II-49
Gibbens v. Curtis III-195
v. Peeler III-509
Gibbins v. Gibbins II-540

Gibbins v. Shepard I-158
Gibbon v. Gibbon I-265. II-774, 782
Gibboney v. Kent III-660
Gibbons' Estate III-4
Gibbons v. Fairlamb II-381, 410
v. Jones III-423
v. Mahon II-481
v. Riley I-564
Gibbs v. Hodge III-512, 585
Giberson v. Giberson I-565
Gibson: Estate of II-426
Gibson: Matter of II-692, 750
Gibson v. Carreker I-536. II-25
v. Dooley II-270
v. Farley II-50
v. Gibson I-410. II-382
v. Hale II-251
v. McCall II-305, 306, 321
v. McCormick III-188
v. Mitchell II-237. III-206
v. Moulton II-364
v. Ponder I-430. III-480
v. Seymour II-562, 566
v. Walker II-524, 534
Giddings v. Crosby II-868
v. Green III-476
v. Seward II-443, 444, 479. 632
Gieger v. Brown III-564
Giesecke Boot & Shoe M'f'g Co. v. Seevers III-582
Gifford v. Choate II-575
v. Sackett III-582
v. Thorn II-520
Gilbert's Appeal II-140. III-192, 395, 416
Gilbert: Matter of I-702. III-420
Gilbert v. Bartlett II-196
v. Chapin I-157, 158
v. Duncan I-647
v. Gilbert I-119. 404
v. Hardwick II-112
v. Knox I-124, 125
v. Little II-232, 246
v. Morrison II-751. III-577
v. Richards II-506, 823
v. Welsh II-732. III-370
Gilbraith v. Winter II-438, 440, 633
Gilchrist v. Cannon III-135
Giles v. Brown I-641, 647. II-160
v. Churchill I-309, 320
v. Franks II-520, 524
v. Little III-198
Gilkey v. Hamilton I-488. III-474
Gill's Appeal II-750-751
Gill: Estate of II-643
Gill: Will of I-118
Gill v. Brouwer II-827
v. Cooper I-652
v. Grand Tower, &c. Co. I-798
v. Roberts II-847
v. Shirley III-173
v. Young III-560
Gillam v. Taylor II-311
Gilleran: Matter of I-612
Gillespie: Matter of II-706
Gillespie v. Brooks III-357, 361, 370, 446
v. Foy II-911
v. Schuman II-355
v. Wright II-248
Gillet v. Mason I 832
Gillett v. Hutchinson III-562
Gillette v. Needham I-676
Gillewaters v. Scott III-176
Gilliam v. Brown I-417, 420. II-611
v. Chancellor I-420
v. McJunkin I-643
v. Willey II-232
Gilligan: Estate of II-848
Gilliland v. Bredin II-520
v. Caldwell III-206
Gillis v. Harris I-9
Gillman v. Hamilton II-313
Gillmer v. Daix I-156
Gilman: Matter of III-362
Gilman v. Gilman I-11, 95. II-303, 645, 866, 868, 869. III-316, 363, 416, 417.
v. Healey II-153
v. McArdle I-530. II-855
v Morrill II-823
Gilmer v. Baker I-640. III-133, 581
v. Gilmer II-443
v. Stone I-422. II-286, 427
Gilmore: Estate of II-461
Gilmore: Matter of II-780
Gilmore v. Dunson II-242
v. Hubbard III-362
Gilneath v. Gilneath I-68
Gilpin v. Hollingsworth II-823
v. Noe III-588
v. Williams II-536
Gilruth v. Gilruth I-710
Ginder v. Farnum I-95, 111
Girard: Matter of III-496
Girard v. City of Philadelphia I-5. II-275
v. Futterer III-571
Giraud v. Giraud I-802. III-507
Gist v. Cattell II-782
v. Gans III-580
Given v. Hilton I-804. II-825
v. Wright I-168
Givens: Matter of I-639
Givens v. Higgins I-309
Givin: Will of I-171-172
Givin v. Green I-406
Glacius v. Fogel III-396, 585
Glancy v. Glancy I-95, 107, 111
Glanton v. Whitaker II-895
Glasgow v. Lipse II-135. III-359
Glass v. Dunn II-452. III-197
v. Howell I-641
v. Woolf III-573
Glasscock v. Clark I-795
Glassen: Estate of I-162
Gleason v. Beers III-282
v. Fayerwether II-574
v. White II-236
Gleen v. Billingslea I-722
Gleespin: Will of I-58
Glem v. Reid I-534
Glen v. Fisher II-756. III-202, 203
Glenn: Estate of II-226
Glenn: Ex parte II-894-899
Glenn v. Belt II-496
v. Billingslea III-655
v. Glenn II-268, 389. III-359
v. Smith I-317
Gloucester: Matter of I-178
Glover v. Flower III-570
v. Hayden I-58, 64
v. Hill II-183, 867
v. Holley II-196, 197
v. Lyon I-488
Goble's Appeal II-360
Goble: Matter of II-360, 527, 645
Goble v. Andruss III-658
v. Grant I-23, 26
Godard v. Wagner II-437, 825
Godbee v. Sapp III-581
Godbold v Godbold II-850
v. Vance I-174. III-573
Goddard: Estate of I-536
Goddard v. Abbott I-536
v. Amory II-374
v. Bolster II-102
v. Brown II-465
v. Johnson II-517
v. May II-570
v. Pomeroy II-317, 320, 323
Godden v. Burke I-24
Godding v. Porter III-362
Godine v. Kidd III-581
Goe: Estate of II-740
Goebel v. Wolff II-345, 528
Goeppner v. Leitzelman II-52, 251. III-177
Goetschius: Estate of I-450
Goff v. Cook I-317
v. Kellogg II-254
v. Kilts I-832
v. Robinson II-250. III-656
Going v. Emery I-797. II-300, 307, 316
Gold: Estate of II-866
Golder v. Bressler I-796
Goldthwait v. Day III-574
Goldtree v. McAlister I-675
Goldsberry v. Gentry III-172, 173
Gollain: Succession of III-439
Gombault v. Pub. Admr. I-19, 26
Gooch v. Association II-303
v. Gooch II-468
Good: Estate of II-850. III-436, 443
Good v. Combs I-796
Goodale v. Mooney II-311, 314
Goodall v. Marshall I-443. II-926
v. McLean II-510
Goodbold v. Roberts III-561, 562
Goode v. McPherson II-305, 315
Goodell v. Hibbard II-431
v. Union Association I-424. II-271, 302, 306, 317, 322, 427
Goodhue v. Barnwell III-217
v. Clark III-509
Goodlett v. Anderson I-339
Goodman v. Walker II-85
v. Winter I-355, 444. 674
Goodnow v. Wells III-655
Goodrich's Appeal II-281
Goodrich: Estate of III-191
Goodrich: Matter of II-520. 563
Goodrich v. Conrad II-215
v. Jones I-866
v. Treat I-529, 530
Goodsell: Appeal of I-236, 237, 242
Goodwin v. Chaffee III-558
v. Colby II-513
v. Goodwin II-545
v. Milton III-139
v. Nickerson II-31
v. Sims III-177
Goodwyn v. Hightower II-234
Goodyear v. Watson II-212, 227
Gookin v. Sanborn II-235
Gordon: Case of I-425, 429
Gordon v. Ballentine II-246
v. Lord Reay I-4
v. Small III-659
v. Stevens II-788
v. West III-414, 421, 439, 445
Gore v. Brazier III-216
v. Stevens II-496, 773
Gorham v. Dodge II-773, 776, 793
Gormley: Estate of II-799
Gorton v. Perkins I-450. II-193
Gosnell v. Flack II-849
Goss v. Eberhart II-353
Gossage v. Crown Point Co I-799
Gossett v. Weatherby I-239
Gott v. Cook I-800
Gottberg v. United States National Bank III-377
Gotzian: Estate of II-785
Gough v Manning II-568, 789
Gould v. Camp III-575
v. Hayes III-435, 442, 446, 447, 658
v. Manning II-786
v. Mansfield I-10
v. Mather II-155
v. Nell III-511
v. Steyer I-626. III-558
v. Taylor Orphan Asylum I-805. II-274
v. Tingley II-842
v. Whitmore II-233
v. Winthrop III 196
Goulding v. Horbury III-581
Gouldsmith v. Coleman II-868

Gouraud: Matter of I-709, 712
Gourdin v. Shrewsbury II-403, 411
Gourley v. Campbell I-805
Gouvane v. Gouvane I-563
Gove v. Gove II-133, III-135
Gover v. Owings I-886
Gouverneur v. Robertson I-13
Governor v. Crane III-137
v. Williams III-184
Gower v. Shelton I-634
Grabill v. Barr I-23, 104, 410
Grady v. Hughes I-647, III-424
v. Porter I-358, III-423
Graetz v. McKenzie II-31
Grafton v. Smith II-872
Graham: Estate of III-420
Graham: Matter of I-144, 388
Graham v. Abercrombie II-848
v. Babcock II-868
v. Davidson II-471, III-396
v. DeWitt I-803, 806
v. Dickinson III-218
v. Flower II-352
v. Graham I-130, 131, II-355
v. Grugan II-461
v. N. Y. Life Ins. Co, II-575
v. O'Fallon I-212, 457
v. State I-649
v. Stull II-866
v. Whitely I-680
Grahame v. Harris III-562
Grande v. Chaves I-573, 700, 708
Grandom: Estate of II-303
Grange's Appeal III-365
Granger v. Bassett II-50
v. Reid II-161
Granjang v. Merkle III-562
Grant v. Bell III-358, 474
v. Bodwell III-131
v. Grant I-457, 804
v. Henley II-789
v. Hughes II-868, III-423
v. Pride III-440
v. Reese II-182, 183, III-135, 355, 356, 447
v. Rogers I-648, 652
v. Shurter III-286
v. Spann I-278, 282
v. Thompson I-408
Grant Coal Co. v. Clary III-284
Grass: Estate of II-360
Grasser v. Eckart II-421, 839
Grattan v. Grattan II-865, 890
Graveley v. Graveley I-318, II-709, 755, 760
Gravely v. Gravely III-654
Graves: Estate of II-874
Graves v. Ewart I-679
v. Flowers I-576
v. Graves II-247, 352, 873, III-179
v. Howard III-221
v. Pinchback III-471
v. Sheldon I-242
v. Spedden II-893, 897
v. Spoon II-234
v. Tilton I-484
Gray: Estate of II-663, 830
Gray: Matter of II-268, III-189, 371
Gray v. Armistead II-132, 134, 136
v. Bailey II-506, 823, 830
v. Barton I-897
v. Blanchard II-573
v. Conyers I-643
v. Franks I-430
v. Fox III-364
v. Gray I-396, 706
v. Harris I-574, II-160
v. Hawkins III-279
v. Henderson I-797, 798
v. Lynch II-154
v. Swain II-86, III-360
v. Waddell I-710
v. West III-197
Graybill v. Warren II-755
Graydon v. Graydon II-427, 589
Grayson v. Tyler II-536, 538
v. Widdle I-575, III-177, 394
Grece v. Helm I-592, 593
Green's Appeal II-374
Green: Ex parte I-646
Green: Matter of II-372, III-371
Green v. Allen II-300, 307
v. Baptist Church I-245
v. Belnap II-830
v. Blackwell II-696, 756
v. Brooks II-212, 214, 286, 241
v. Brown I-575
v. Creighton III-362, 505
v. Cutwright I-843
v. Davidson I-565
v. Dennis II-321
v. Dikeman I-265
v. Green I-88, 331, II-528, 696, 779, 787, III-171, 175, 367
v. Hathaway II-850
v. Howell II-506, 534, 646, 899
v. Hudson R. R. R. II-399
v. Johnson I-800, 805
v. Probate Judge II-251
v. Raymond I-795
v. Russell II-253, 268
v. Sargent III-419
v. Saunders III-442
v. Stobo II-252
v. Thompson II-268
v. Walker II-900
v. Weaver II-874
Greenbaum v. Elliott II-244
Greene v. Butterworth II-215
v. Byrne II-159
v. Day II-234
v. Dennis II-827
v. Grimshaw III-313
v. Holt II-154
v. Martin III-206
v. Speer II-889
Greener v. Neal II-254
Greenhaugh v. Greenhaugh II-184
Greening v. Sheffield III-312
Greenleaf v. Allen III-284, 479, 563
Greeno v. Greeno II-133, 462
Greenough's Appeal II-215
Greenough v Greenough I-104, 106, 179
v. Small I-803
Greentree: Estate of I-698, 704, 706
Greenville etc. Railroad v. Joyce III-561
Greenwood: Matter of II-670
Greenwood v. McGilvary II-254
v. Murray I-675, II-384
Greer v. Cayle III-173
v. Chester II-287
v. Greer III-437
v. Willis III-584
Gregg v. Bethea II-516, 517, 565
v. Currier I-638
v. Myatt I-398, 701, 708
v. Wilson I-540
Gregory: Estate of II-218
Gregory v. Beasely II-360
v. Cowgil I-417
v. Menefee III-317
v. Rhoden III-173
Greiner's Appeal II-789, 794
Greiner v. Greiner I-795, II-139
Gresham v. Pyron I-592, 593
Greve v. Camery I-141
Grey v. Grey II-896, 898
Greyson v. Weddle III-176
Grice: Estate of III-175, 179
Grider v. Eubanks II-782, 791
v. McClay III-178
Gridler v. Apperson III-173
Gridley v. Andrews III-194
v. Gridley II-558
Grier's Appeal III-563
Grier v. Cagle III-582
Griffin v. Graham II-304
v. Griffin I-410
v. Johnson II-138
v. Lynch II-514
v. Pringle III-658
Griffith: Estate of I-699, 700, 709
Griffith v. Chew II-625
v. Coleman I-582, 588
v. Diffenderfer I-54, 64, 179, 425, 427
v. Frazier I-600, 677, 678
v. Frederick Co. Bank III-172
v. Marsh I-153
v. Railroad Co. II-28
v. Wright I-562
Griggs: Estate of II-663
Griggs v. Shaw III-437
v. Veghte II-696, 750, 785
Grigsby v. Breckinridge II-516, 518, 546, 565
v. Cocke I-624, 626
Grim's Appeal II-140, 676, 828, 846, 899
Grim: Estate of II-716, 852
Grimball v. Patton I-213, II-926, III-508
Grimes v. Harmon I-417, 421, II-313, 317, 321
v. Hilliary III-509
v. Smith III-198
v. Talbert I-484
Grimke v. Grimke I-74
Grimmet v. Henderson I-650
Grinnell v. Baker III-368, 446
Grinstead v. Foute II-152
Grisson v. Hill II-305
Griswold v. Chandler II-170, III-361, 416, 419
v. Griswold II-198
v. Hill II-103
v. Johnson II-823
Groce v. Rittenberry II-342
Grommex v. St. Paul Trust Co. III-581
Groome: Estate of II-867
Groot v. Hitz III-219, 584
Gross: Estate of II-341, 342, 506, 822
Grote: Matter of II-586
Grote v. Pace II-516, 856, 926
Grotenkemper v. Bryson III-200
Grothaus v. Witte II-195
Groton v. Ruggles I-331, II-717, III-378
v. Tallman I-648
Grou v. Brinley II-434
Grout: Matter of II-172
Grout v. Cooper II-790
Grove: Matter of I-629
Grove v. Spiker I-63
Grover v. Grover I-897
Groves v. Kennon II-777
v. Williams III-355, 512
Grow v. Dobbins III-206
Grubb: Appeal of I-843
Grubb v. Clayton III-566
Grubbs v. McDonald I-160
Grymes v. Pendleton III-285
Guard v. Hale II-245
Guery v. Vernon I-9
Gugel v. Vollmer I-63, 183
Guldry: Succession of I-705
Guler v. O'Daniel II-926
Gulon v. Underhill III-363
Guitar v. Gordon I-242, II-363
Guldin: Estate of I-529, 539
Guldin v. Guldin III-579
Gulick v. Bruere III-138
v. Gulick II-478, III-515
v. Van Arsdale III-480
Gumble v. Pfluger II-818
Gums v. Capehart II-680
Gunby v. Brown III-169
Gundry v. Henry II-822
Gunter v. Fox II-23
v. Gunter I-119, 403

Gunter v. James II-236
Gurley v. Butler I-704
Gurnee v. Maloney III-561
Guthrie's Appeal II-354, 362
Guthrie v. Guthrie III-477
v. Kerr III-470, 471
Guthrie v. Price I-20, 23
v. Wheeler II-480. III-363, 414
Gutridge v. Vanatta I-626, 641
Gutzweiler v. Lackman I-818
Guy v. Gericks III-207
Guyther v. Taylor II-515, 524
Gwin: Matter of II-730
Gwynn v. Dorsey II-135
v. Howard II-197
Gwynne v. Estes III-122
Gyger: Estate of I-539

H.

Haack v. Weicken II-776
Haas v. Childs I-593
Habergham v. Ridelhalgh II-340
Haberman's Appeal III-418-419
Hackney v. Griffin II-335
v. Vrooman I-897
Haddock: Estate of II-672
Haddock v. Boston & Maine R. R. I-381
Hadley v. Bryan II-28
v. Gregory III-168
v. Hopkins Academy II-304
v. Kendrick II-135, 136
Hadsall v. Scott III-582
Haffey: Matter of III-354
Hagan v. Patterson III-207
Hagenmeyer: Will of II-288, 318
Haggard v. Rout I-806
Haggerty v. Central R. R. II-30
v. Lauterman I-797
v. Mann III-479
Hagler v. McCombs III-443
Hahnlin's Appeal II-241
Haig: Matter of III-179
Haigh: Estate of III-168
Haight v. Bergh III-587
v. Brisbin I-647, 704, 707. III-371
v. Hoyt II-27
Haile: Succession of II-899
Hailey v. Wheeler III-312
Haines: Estate of III-438
Haines: Matter of I-419
Haines v. Allen II-307, 316
v. Meyer I-650
v. People I-358
v. Price II-211. III-181, 583
Hair v. Avery II-73
v. Goldsmith II-785
Hairston v. Hairston I-202, 204, 230
v. Hall II-678
Hake v. Stott I-706, 707
Haldeman v. Haldeman II-354, 355, 363
Hale v. Aaron II-739
v. Hale I-797, 868
v. Marquette III-320
v. Monroe I-458
Hales v. Holland II-246
Haley v. Gatewood II-184
v. Thames I-306
Haleyburton v. Kershaw III-217, 279
Halfman v. Ellison II-241
Hall: Matter of II-411. III-393
Hall v. Anthony III-422
v. Bennett III-282
v. Boyd II-154
v. Bramble I-636, 647
v. Bray I-240
v. Brewer III-171, 175, 179
v. Bumstead III-207, 576
v. Burkman I-152
v. Callahan III-174
v. Carter II-152. III-353, 394, 396
v. Chaffee I-9
v. Chapman II-137
v. Cushing I-564, 626, 629. II-479. III-366, 378
v. Davis II-899
v. Den I-798
v. Hall I-41, 118, 120. II-273, 432, 627, 680, 773, 781. III-215, 218, 443
Hall v. Hamblett III-579
v. Hancock II-342
v. Martin II-237. III-207
v. Merrill I-386
v. Monroe I-700
v. Nute II-587
v. Otis III-581
v. Pegram II-197
v. Smith II-788, 794
v. Superior Court II-242
v. Thayer I-350, 351, 539
v. Thompson III-193
v. Tryon III-439
v. Tufts II-534, 574
v. Wilson II-250. III-446
v. Woodman I-675. III-168, 177, 574
Halleck: Estate of II-237
Halleck v. Mixer II-24
v. Moss II-187
Hallet: Matter of II-362
Hallet v. Thompson II-576
Hallett v. Allen II-750
v. Branch Bank II-240, 244
v. Hare II-912
Halley v. Webster I-26, 28
Halliburton v. Carson III-374
Halliday v. Du Bose I-529
Hallock v. Smith III-312
v. Teller III-281
Halloway: Estate of 316
Hallowell: Estate of III-216, 218, 219
Hallowell v. Hallowell I-95, 108
v. Phipps II-360
Hallyburton v. Carson I-254
Halsey: Estate of II-716
Halsey v. Convention II-513, III-652
v. Patterson II-409, 437, III-215
Halstead v. Tyng III-580
Halsted v. Hall II-370
v. Hyman III-365
v. Meeker II-753. III-368
Ham v. Case I-127
v. Goodrich III-280
v. Henderson II-86. III-474, 479
v. Kornegay II-159
Hamberlin v. Terry II-827
Hambleton v. Mendenhall I-60, 414
Hamblett v. Hamblett I-773, 778
Hambrick v. Crawford III-475
Hamden v. Rice II-307
Hamer v. Bethea I-800
v. Hamer II-890
Hamill's Appeal III-285
Hamilton: Estate of I-235, 299, 573. II-825, 846, 868
Hamilton: Matter of I-536
Hamilton: Succession of II-270
Hamilton v. Buckmaster II-779
v. Buckwalter II-786
v. Flinn I-264
v. Phillips II-864
v. Pitcher II-352
v. Rodgers II-541
v. Serra II-181, 472. III-397
Hamlet v. Johnson II-830
Hamlett v. Hamlett II-344
Hamlin v. Mebane III-571
v. Osgood II-392, 399
Hammersley: Estate of I-612
Hammersley v. Lambert III-286
v. Lockman I-207
Hammett v. Hammett II-646
v. Starkweather II-242
Hammon v. Huntley II-154
Hammond v. Hammond I-423, II-441, 571
v. Hoffman III-285, 560
v. Huntley III-562
v. Wood I-629
Hammons v. Renfrow II-73, 251
Hamper: Matter of III-578
Hamrick v. Craven II-132
Hanbest's Appeal III-363
Hanbest: Estate of II-685. III-194
Hance v. Conover II-184
Hancock v. Hubbard II-846
v. Titus II-518
Hancox v. Meeker II-198. III-372
v. Wall III-204
Hand v. Marcy II-500, 506, 823, 830, 865
Handberry v. Doolittle II-348
Handfield: Matter of III-442
Handley v. Heffiin I-642. II-653, III-375
v. Wrightson I-158, 161. II-895
Handlin v Davis III-419
Handly v. Snodgrass III-416
Handy v. Collins II-182. III-437, 439
v. Marcy II-792
Hanf v. Whittington III-424, 660
Hangen v. Hachemeister III-510
Hanifan v. Needles I-711. II-159
Hankins v. Hughes II-268
v. Kimball III-188
v. Layne I-356. II-184. III-651, 656, 657
Hanna's Appeal II-559. III-202
Hanna v. Fisher II-241
v. Palmer II-694
Hannah v. R. R. Co. II-28
v. Swarner I-801, 805
Hannahs v. Hannahs III-365
Hannan v. Osborn II-353
Hannum v. Day III-170
Hanover: Matter of I-536
Hansbrough v. Hove II-649
Hanscom v. Marston III-352
Hansell v. Forbes II-264
Hanselt v. Gano III-585
Hansford v. Elliott I-318. II-944, 537
v. Van Auken II-102. III-475
Hanson v. Brown I-798
v. Hanson III-190, 195
v. Worthington I-325, 329
Hautz v. Sealy III-572
Hapgood v. Houghton II-169, 585, 773, 782. III-318, 479, 563
Happoldt v. Jones III-478
Happy: Will of I-459
Haraden v. Larrabee II-398, 899, 481, 865, 913
Haralson v. White III-373
Harbeck v. Pupin II-226
Harberger: Appeal of I-272, 625
Harbin v. Levi II-85, III-474, 475
Harcum v. Hudwall I-801, 803

Hard v. Ashley I-253. II-333, 880
v. Davison I-229
v. Turnure II-350
Hardaway v. Parham I-703, 708
Hardee v. Cheatham II-198, III-369
Harden v. Hays I-26
v. Taylor III-582
Hardenberg v. Manning II-172
v. Ray II-828
Hardenburgh v. Blair II-740
Harder: Will of I-120, 125, 128
Hardesley: Succession of II-271, 272
Hardin v. Melton II-212
Harding v. Evans III-312
v. Littlehale III-132
v. McMoyne III-173, 183
v. Shepard III-478
v. Smith II-253
Hardison v. Billington II-869
Hardt v. Birely III-439
Hardwick v. Thomas II-159, 161
Hardy: Will of I-23, 64
Hardy v. Ames II-231, 232, 248
v. Cole III-585
v. Collins III-436
v. Gage II-349
v. Hardy I-675
v. Merrill I-409
v. Miles II-160, 162, III-560
v. Scales II-784, 792
v. Smith II-431, 855
Hargis v. Sewell I-652, III-572
Hargraves v. Read I-179
Hargrove v. Lilly II-198
Harker v. Clark II-26
v. Frick I-639
v. Reilly I-802
v. Whitaker III-287
Harkins v. Hughes II-680, III-559
Harlan: Estate of I-352, 484
Harleston v. Corbett I-404
Harley v. Barnard III-175
Harley v. Harley II-895
Harlow v. Harlow III-422
v. Mills III-363
Harman: Estate of II-380
Harman v. McMullen II-159
Harmon v. Siler III-286
v. Smith III-190
Harmony Lodge: Appeal of I-51
Harness v. Green II-212
v. Harness II-897
Harney v. Dutcher II-112
Harnish v. Keener III-579
Harper's Appeal II-669
Harper v. Bibb II-443
v. Butler II-132, III-134, 476
v. Harper II-893, 898
v. Lacey III-560
v. Phelps I-159, II-406
v. Smith I-563
v. Strutz III-182, 472
v. Wilson II-383
Harral v. Harral I-91
v. Wallis II-925
Harrel v. Harrel I-45
Harrell v. Davenport II-755, 757
v. Mattingley III-584
v. Scudder III-562
Harriet v. Swan III-575
Harriman v. Harriman II-432
Harring v. Allen I-187
v. Coles II-911
Harrington v. Brown I-338, 349, II-140
v. Keteltas III-356, 569
v. La Rocque II-848, 849
v. Libby III-362
v. Stees I-168, 169, 170
Harris' Appeal II-897
Harris: Matter of II-792, III-440, 444, 445
Harris: Succession of I-675
Harris: Will of I-127, 389
Harris v. Alderson II-343, 535, 536
v. Am. Bib. Soc. II-270, 288
v. American Miss. Soc. II-286, 287
v. Bryant III-179
v. Carpenter II-540
v. Chipman I-705
v. Clark 806, 897, 898
v. Dillard I-703
v. Fly II-497, 517, 544, 560, III-191, 200, 201
v. Harbeson I-76
v. Harris I-165, 212, 681, II-888
v. Hearne II-560
v. Henderson II-268
v. Hutcheson II-237
v. McElroy II-354
v. McLaren II-385
v. Martin III-443
v. Meyer II-215
v. Millard III-178
v. Moore I-429
v. Parker II-137, 138, III-354, 358, 359, 446
v. Philpot II-382
v. Rice III-566
v. Shafer I-545
v. Slaight III-507
v. Tichenor II-341
v. Vanderveer I-133
Harrison: Appeal of I-54, 61, 65
Harrison: Estate of III-410
Harrison: Will of I-58
Harrison v. Ayres III-280
v. Botts II-823
v. Burgess I-148
v. Clark I-636, 651, 675, 708, 713
v. Foster II-453, 457
v. Harrison I-158, II-238, III-572
v. Haskins III-219
v. Jewell II-825
v. Jones II-243
v. Lightsey III-423
v. Morton I-419, II-491
v. Righter III-512
v. Rowan I-18, 20, 45, 132, 410
v. Sampson III-284
v. Turbeville I-644
v. Vreeland III-283
v. Ward II-398
Harshbarger v. Midland R. R. Co. II-24
Harshman v. Stonaker II-868
Hart: Matter of I-627, III-511
Hart v. Anger III-319
v. Circuit Judge II-246
v. Hart I-245, II-138, 341, 483, III-191, 286, 652
v. Jewett II-211, III-219
v. Johnson II-642
v. Marks I-422, II-424, 506, 830
v. Smith I-293, 294, 575, 714, II-111, 152
v. Soward I-530
v. Williams II-750, III-193, 195
Harte v. Houchin III-477
Hartman: Matter of III-372
Hartman v. Dowdel II-74
v. Strickler I-66
Hartnett v. Wandell I-279, 282, 284, 286, 290
Hartsfield v. Allen III-361
Hartwell v. McMaster I-24, 104
v. Rice II-890, 891, 896, 897
Harvard v. Peavey I-805, II-539
v. Tufts II-636
Harvard College v. Amory III-370
v. Gore I-353
v. Quinn II-675
Harvell v. Seal III-422
Harvey: Matter of I-530
Harvey v. Brispin III-372
v. Richards I-268, II-927
Harvey v. Rogers II-161
v. Skilliman II-232
v. State III-511
v. Sullens I-60
Harvy v. Chouteau I-141, 249, 255
Harwell v. Benson II-583
Harwood v. Harper II-268, III-420
v. Pearson II-267
Hasbrouck v. Hasbrouck II-134
Hascall v. Cox II-380
Haselden v. Whitesides I-318, 488
Haselwood v. Webster I-174, 243
Hasenritter v. Hasenritter II-873
Haskell: Estate of I-392, 543
Haskell v. Bowen II-85, III-479
v. Brown III-475
v. Farrar I-635
v. House I-799
Haskin v. Teller II-850, III-445
Haskins v. Hawkes I-303, 818
v. Tate II-538
Haslage v. Krugh II-51
Hasler v. Hasler II-169, 196, 197, III-416
Hassanclever v. Tucker III-193
Hassinger: Appeal of I-565
Hastings: Matter of II-442
Hastings v. Clifford II-789
v. Hastings II-540
v. Myers II-872
Hatch: Estate of II-788
Hatch v. Atkinson I-896
v. Bassett I-800, II-792, 873
v. Hatch I-253, II-912, III-281
v. Kelly III-169
v. Proctor 16, 363, 369, 488
v. Sigman I-207, 208
v. Straight II-893, 897
Hatchcraft v. Tilford III-375
Hatchell v. Curbow II-171
Hatcher v. Clifton II-137
v. Hatcher I-255, 266
v. Robertson II-826
Hatchett v. Berney I-429
v. Billingslea II-162
v. Jerome I-722
Hatfield v. Sohier II-346, 536
Hathaway: Appeal of I-392
Hathaway v. Hathaway II-791, III-582
v. Leary II-517, 565
v. New Baltimore II-305
v. Sackett I-626, 641, II-274, 304
v. Sherman III-132
Hathorn v. Eaton II-28
v. King I-24, 45, 407
Hatten: Matter of I-386
Hattersley v. Bissett II-776
Hatton v. Jones III-579
Haugh v. Seabold II-874
Hauk v. McComas II-795
Haus v. Palmer I-118
Hauselt v. Patterson III-186, 208
Hauser v. Lehman III-395
Hautress v. Place II-373
Havard v. Davis I-212, 252, 255
Havelick v. Havelick I-710
Haven v. Foster I-255, 265
v. Hillard I-118
Havens v. Allen II-892
v. Havens I-265, II-461, 787
v. Sackett II-773, 779, 780
v. Thompson II-848, 900
Haverhill Loan &c. Ass'n v. Cronin III-221
Haverstock v. Sarback II-894
Haviland v. Cocks II-663, 664
v. Fidelity &c. Co. II-250
Hawes v. Foote II-471
v. Humphrey I-117, 118, 242
v. Nicholas I-153
Hawkins v. Carpenter I-641
v. Craig III-130

Hawkins v. Cunningham III-437, 442
v. Everett II-382
v. Garland II-424
v. Grimes I-22
v. Hawkins II-281
v. Johnson I-302
v. Ridenhour II-232
v. Skeggs II-588
Hawley v. Botsford II-258, III-207
v. Brown I-404
v. James I-806. II-344, 538, 773, 774, 827. III-216, 440, 443
v. Northampton I-9. II-574
v. Ross I-796
v. Singer II-196, 197. III-436, 438, 442
v. Tesch III-651
Hawman v. Thomas I-423, 424, II-491
Hawn v. Banks II-500, 502
Haworth's Appeal III-191
Hawthorn v. The State II-101
Hawthorne v. Beckwith II-851
Haxall v. Lee I-533
Haxton v. McClaren III-585
Haxtun: Matter of III-177
Haxtun v. Corse I-800, 802
Hay's Appeal III-445
Hay v. Green II-850
Hayden: Matter of II-775. III-438, 443, 445
Hayden v. Burch II-889, 892
v. Henderson III-281
v. Stoughton II-462, 564, 829
Haydon v. Ewing II-773, 777
Hayes: Matter of II-868
Hayes v. Hayes I-532, 593. II-440, 457. III-655
v. Jackson II-824
v. Lienloken I-681
v. Pratt II-927
v. Tabor II-519
v. Sykes III-202
v. West I-425
v. Williams II-33
Hayle v. Entrekin I-722
v. Jones II-352
v. Stone II-361
Haymond v. Jones II-739
Hayne v. Ivrine II-383
Haynes v. Colvin III-208
v. Haynes I-106, 127, 144, 161
v. Meeks I-708, 713
v. Semmes II-251
v. West I-179
Hays v. Cecil II-926
v. Collier II-535, 537
v. Gourley II-534, 535
v. Harden I-107, 111
v. Hays III-394
v. Hibbard II-889
v. Jackson I-5, 94. III-215, 218
v. McNealy III-167
v. Montgomery III-651
v. Wright II-826
Hayward v. Hayward I-827, II-74, 855
v. Hazard I-410
v. Place I-574
Hazard v. Engs II-198
v. Hefford I-62
Hazeltine v. Vose II-303, 425
Hazelton v. Valentine I-643, III-474
Hazelwood v. Webster II-636
Hazen v. Durling I-642, 643, II-227. III-585, 651
Head v. Bridges I-713. III-395, 423
v. Drake II-252
v. Driver III-472
v. Manners III-574, 577
v. Sutton I-316
Headman v. Rose I-531
Headley v. Renner III-202, 203
Heady v. State I-642
Heald v. Heald II-538
Healey v. Robb II-508
v. Toppan II-436, 453, 457, 662, 700, 756
Heard v. Brawner II-589
v. Drake III-375
v. Lodge I-636, 653
v. Northington III-131
v. Palmer I-673
Hearn v. Ross I-417
Hearne v. Kevan II-680
Heartt v. Livingstone I-211, 212, 220. II-343
Heater v. Van Auken I-417, 418, II-344, 364
Heath v. Allin III-394
v. Belk II-211
v. Cole I-127
v. Garrett II-241
v. White II-887
v. Withington I-72, 78, 469
Heathcote: Estate of III-280
Heather: Estate of II-195, 213
Heatherington v. Lewenberg III-193, 196
Heaton: Matter of II-382, 585
Heaton v. Merchant II-618
Hebden: Will of I-171
Hebert: Succession of II-888
Hebert v. Jackson I-713
Heberton: Estate of I-800, 802
Hecht v. Ohio &c. R. R. II-33
v. Skaggs III-206
Heck v. Clippinger II-406
Hecker v. Gentry II-344
Heddleson: Estate of II-306, 315
Hedenberg v. Hedenberg III-137, 515
Hedger: Matter of III-193
Hedges v. Norris III-571, 654, 659
Hedrick v. Tuckwiller III-378
Heenan: Will of II-180
Heerman v. Robertson III-215
Heffner: Estate of III-285
Hegarty: Appeal of I-674. III-168
Hegeman v. Fox II-925
Hegerich v. Keddie II-100
Height v. Taylor II-252
Heilman v. Heilman II-540
v. Jones I-709
Heinaman's Appeal II-795
Heischler: Matter of II-866
Heiskell v. Chickasaw Lodge II-272, 303, 323
Heisler v. Knipe II-154
v. Sharp II-612
Heiss v. Murphy II-313, 317, 321
Heisse v. Markland II-347
Heizer v. Heizer II-49
Hellenberg v. B'nai Berith II-23
Heller: Estate of II-873
Hellerman: Estate of II-491
Hellier v. Lord III-561
Hellman v. Hellman II-519
v. Wellenkamp III-355
Helms v. Franciscus II-497, 515, 826
Helsley v. Craig III-358
v. Fultz III-358
Hemmenway v. Lynde I-919
Hemmje v. Meinen III-507
Hemphill v. Hamilton II-102
v. Lewis II-215
v. Moody II-693, 826, 830, III-376, 506
Hempstead v. Dickson II-348
Hench v. Metzer III-287, 352
Henderson v. Ayres II-247, 250
v. Clarke I-484
v. Henderson I-801. II-381, III-364
v. Kenner I-119, 404
v. Ryan I-264
v. Sherman II-910
v. Tucker II-873
Henderson v. Wilson I-802
v. Winchester II-112
v. Womack II-342
Hendren v. Colgin I-530, 575
Hendrick v. Mayfield III-665, 666
Hendricks v. Keesee III-207
v. Snodgrass I-574
v. Thornton III-560
Hendrickson: Matter of II-249
Hendrickson v. Hendrickson III-139, 172
Hendrix v. Boggs I-678
v. Hendrix II-52
v. McBeth II-792
Hengst's Appeal III-397
Hengst: Estate of II-898
Henning v. Harrison II-574
Hennion v. Jacobus II-751, 754
Henry: Estate of II-869
Henry: Ex parte I-129
Henry v. Dilley III-559
v. Estey II-232
v. Fiske II-620
v. Graham III-217
v. McCloskey I-804
v. Mills III-506
v. Roe III-568
v. State II-844, 847
Henry County v. Winnebago Drainage Co. II-307, 315
Henry Watson Soc. v. Johnston II-334, 830
Henshaw v. Foster I-159
v. Miller II-27
v. Whitney II-850
Henson v. Wright II-479
Heoring: Succession of II-171
Hepburn: Estate of III-442
Hepburn v. Hepburn II-756. III-319, 361, 369, 413
Heppenstall: Estate of III-393
Herald v. Harper II-152
Herbert v. Berrier I-118, 134, 412
v. Post II-848, 850, 518, 544, 546
v. Smith II-501. III-313
v. Tuthill I-799, 802, 804. II-516
v. Wren II-773, 785
Herkimer v. McGregor II-895
Hermstead: Estate of III-446
Heron: Estate of I-529, 539
Heron v. Hoffner III-473
Herr: Estate of II-344, 360
Herrick: Estate of II-343
Herrick v. Minneapolis &c. R.R. II-29
Herring v. Wellons II-253
Herrington v. Budd I-239
v. Winn III-581
Herron: Succession of II-135
Hershey: Estate of II-340
Hershy v. Clark I-175
Herster v. Herster I-64, 423
Hertell v. Bogert II-132, 182
v. Van Buren II-153
Herterman: Matter of III-416
Hesaw v. Sigler III-578
Hesdra: Matter of III-180, 199
Hesketh v. Murphy II-302, 313
Heslop v. Gatton I-417. III-185, 194
Hess: Estate of III-281
Hess v. Singler I-157
Hester v. Hester II-317, 846
Heth v. Wilson I-627
Hettrick v. Hettrick II-875
Hetzel v. Barber III-372
Heuser v. Allen II-300, 302, 315
Heward v. Slagle I-539
Hewes v. Dehon III-189, 217
Hewett v. Bronson II-170. III-313
Hewitt: Appeal of I-356
Hewitt: Estate of II-287, 307
Hewitt: Will of I-137
Hewitt v. Durant III-173

Hewitt v. Hewitt I-137, III-173
Heydock v. Duncan I-626, 706
Heydrick: Appeal of III-579
Heyer v. Burger I-77, 124
Heyward v. Hasell II-370
v. Hazard I-488
v. Heyward II-502
Hibbits v. Jack II-588
Hibbs v. Insurance Co. II-775
Hibernia &c. Society v. Conlin II-239
v. Hayes II-329
v. Herbert III-655
v. Wackenreuder II-289
Hickey v. Hickey II-791
Hickman v. Brown I-76, 77
v. Holliday I-252
v. Kamp III-355
Hickok v. Frank I-433
Hicks v. Barrett II-32
v. Forrest II-899
v. Gildersleeve II-896, 897, 900
v. Jamison II-246
v. Pegues II-541
v. Peterson I-566
Hickson v. Bryan II-793
Hier v. Grant III-581
Higginbotham v. Cornwall II-788
Higgins: Will of I-125, 144
Higgins v. Carlton I-22, 24, 45, 58, 64, 103, 118, 120
v. Central &c. R. R. II-29
v. Driggs III-314
v. Hallock III-320
v Rector II-250. III-286
v. Reed III-170
v. Union Trust Co. III-507
v. Waller II-518
Higginson v. Second National Bank III-360
High's Appeal II-894
High: Estate of II-829
High v. Worley I-801. 802, II-517
Higham v. Vanasdol II-892. 896
Highland v. Highland I-148
Hight v. Wilson I-107. 118
Hignutt v. Cranor II-184
Hildebrand's Appeal II-875
Hildebrandt: Estate of II-268
Hildebrant v. Crawford III-581
Hildreth v. Marshall III-569
Hileman v. Hileman II-891
Hill: Estate of III-283. 373
Hill: Matter of I-795. III-574
Hill v. Alspaugh I-380
v. Arnold III-652
v. Bacon II-534
v. Barge I-131, 166, 406
v. Bloom I-856. II-618, 646, 895
v. Bowman II-406
v. Brennan II-86
v. Downes II-584, 547, 573
v. Drew II-845
v. Harding I-177. II-842
v. Henderson I-312
v. Hill II-390, 839. 875
v. Hilton III-580
v. Hotchkiss III-582
v. Jones III-191, 197. 200
v. Lewis II-868
v. McGarvey II-315
v. Moore II-886
v. Nelson III-436, 439. 441
v. Nichols II-234. III-207
v. Rockingham Bank II-539
v. Smalley I-336. III-473
v. Townley II-240
v. Townsend II-74
v. Truby III-579
v. Tucker I-288, 362. III-516
v. Wentworth I-867
Hillbisk's Appeal III-179
Hilliard: Matter of III-416
Hilliard v. Binford II-779, 785
v. Kearney II-382, 515
Hillis v. Hillis II-497. 826. III-201. 666, 667
Hillman v. Schwenk III-470. 471
Hills v. Barnard II-388
v. Putnam II-712
Hilton v. Briggs I-641. II-183
v. Hilton I-806
Hilyard: Estate of II-754
Hime's Appeal II-871
Hinckley: Estate of II-289, 314, 315, 325. 826
Hinckley v. Harriman II-718
v. House of Refuge II-777
v. Thatcher I-422. II-306, 427
Hindley v. Hindley II-781
Hindman v. State II-717
Hinds v. Hinds I-640
Hine v. Hine I-420. II-642
v. Hussy I-540
Hines v. Hines III-199
v. Hockman II-237
Hinkle v. Eichelberger I-721
Hinnershits v. Bernard II-784
Hinson v. Ennis III-218
v. Williamson III-320, 396
Hinton v. Bland II-159. 160
v. Kennedy III-374
v. Milburn II-382
v. Whitehurst III-207
Hirst's Appeal III-186
Hirst: Estate of III-186
Hise v. Fincher I-184, 189
Hitchcock v. Mosher II-22, III-438
v. Thompson I-95
Hite: Estate of II-848
Hix v. Hix III-359
v. Whittemore I-26
Hoak v. Hoak II-645, 897
Hoban's Appeal II-849
Hoban v. Picquette I-47, 414
Hobart v. Connecticut Tpk. Co. III-564
Hobart v. Stone II-618
Hobart College v. Fitzhugh III-507
Hobbs v. Middleton I-653
v. Russell III-582
Hoberman v. Baker III-139
Hobson: Matter of III-138, 447
Hobson: Will of II-717, 720
Hobson v. Evans I-675
v. Payne III-171, 177
Hochstedler v. Hochstedler I-155
Hocker: Estate of II-172
Hocker v. Gentry I-602. II-348
Hockinsmith v. Slusher I-242
Hodgdon v. White III-574
Hodge v. Hawkins III-418. 440
v. Hodge II-707
Hodgens v. Wilkins II 540
Hodges v. Bauchman I-674
Hodgin v. Toler I-566
Hodgman: Matter of II-793, III-375. 564
Hodgson v. Gemmil II-518
v. Halford II-587
v. Macy II-893
Hoell v. Blanchard I-630
Hoes v. Van Hoesen III 189
Hoeveler v. Hume II-574
Hoey v. Kenny II-395
Hoff's Appeal II-212, 384. III-189
Hoffen: Estate of II-317
Hoffer: Estate of III-439, 447, 579
Hoffman v. Beard III-168
v. Hoffman I-129
v. Pennsylvania Hospital II-754
v. Wilding III-185. 207
Hoffner v. Wynkoop II-839
Hogan v. Curtin II-587
Hogan v. Grosvenor I-120, 126
Hoge v. Fisher I-410
v. Junkin III-171
v. Vintroux I-644
Hogeboom v. Gibbs III-579
v. Hall II-564
Hogg v. Jones II-587
Hohman: Matter of II-575
Holt v. Holt II-194, 586
Holtt v. Holtt I-179, 190, 207, 239
Hoke v. Fleming II-153
v. Harman II-633
v. Hoke II-135, 506
Holbert: Matter of III-419
Holbrook v. Bentley I-626, 629
v. Campan I-693
v. Harrington II-823. III-378
v. Lackey I-798
v. McCleary II-824. 827
v. White II-27
Holcomb v. Coryell I-624. 626, III-353
v. Holcomb III-369
v. Phelps II-926
v. Sherwood II-847
Holcombe v. Holcombe I-208, III-366, 397, 442
v. Lake II-538
Holdane v. Duche III-285
Holdefer v. Teifel II-709
Holden v. Bank III-371
v. Blaney II-516
v. Cook Co. II-428
v. Currey I-653
v. Fletcher I-627. II-181, 238, III-564, 570
v. Lathrop III-422
v. Meadows I-24
v. Strong II-483
Holder v. Nashville &c. R. R. II-31
Holderby v. Walker II-510. 585
Holderman v. Gray III-580
Holeman v. Fort II-350, 382
Holifield v. Robinson II-308
Holladay: Matter of III-366
Holladay v. Holladay I-278, III-512
Hollady v. Hollady III-422
Holland v. Adams I-800, 803
v. Alcock II-282, 812, 317, 319
v. Cruft I-800, 803. III-130
v. Ferris I-207
v. Fuller I-793
v. Peck II-313
Hollenback v. Clapp III-315
Hollenbeck v. Berkshire R. R. Co. II-29
v. Pixley II-869
Holley v. S. G. III-443
Holliday v. Holliday II-846
Hollifield v. Stell II-377
Hollingshead v. Sturgis I-184
Hollingsworth: Will of I-165, 427
Hollingsworth v. Davis I-795
v. Hollingsworth II-361
Hollis v. Drew Theological Seminary I-11. II-270, 287, 289
Hollister v. Attmore II-896
v Shaw II-604
Holloman v. Copeland I-242
Holman v. Nance III-316
v. Perry I-354, 468
Holmes: Matter of I-573
Holmes v. Bridgman III-357, 360
v. Brooks III-581
v. Caden III-283
v. Cock I-624
v. Field II-588
v. Holmes I-421, 694. II-75
v. Lusk II-234
v. Mead II-320
v. Moore II-24
v. Tenney III-478
Holms v. Williams I-424
Holsen v. Rockhouse II-362

Holson v. Hale I-805
Holt: Estate of I-154
Holt v. Jex II-443
v. Lamb I-801
v. Libby II-621. III-558
Holton v. Daly II-100
Holyoke v. Haskins I-353, 677
Holzman v. Hibben III-471
Home Exchange Bank v. Eames II-537
Homer's Appeal III-173
Homer v. Shelton II-694, 700, 707
Homes: Matter of I-160
Hone v. Kent II-489
v. Van Schaick II-342, 360, 516, 782
Honts v. Shepherd III-424
Hood: Estate of III-417
Hood: Matter of I-722. III-411
Hood: Succession of II-185
Hood v. Haden II-443
v. Hayward I-637
v. Hood I-647. II-235. III-138, 204. 207
Hook v. Haywood III-652
v. Hook II-893, 898, 899
v. Payne III-417
Hooker v. Bancroft II-185
v. Olmstead II-182
Hooley v. Gieve I-704. III-318
Hooper: Estate of II-468
Hooper v. Cummings II-564, 583
v. Gorham II-28, 101
v. Hardie III-177
v. Holmes III-512
v. Hooper I-634. 640. II-183, 506, 536, 760. III-315, 357, 651
v. Scarborough I-573, 714
Hoopes v. Brinton III-415
v. Dundas II-588
Hoover: Will of I-410
Hoover v. Brem II-269
v. Hoover II-540. III-202
v. Landis I-801. II-798
v. Malen III-369
Hope's Appeal III-183
Hope v. Brewer I-804
v. Hart I-431
v. Rusha II-539
v. Wilkinson III-217
Hopkins: Matter of II-676. III-7, 199, 437
Hopkins: Succession of III-437
Hopkins v. Faeber III-582
v. Glunt I-156
v. Holt I-141, 421
v. Hopkins II-514, 537
v. Jones II-541
v. Ladd III-208
v. Lane I-350, 351
v. Long II-866
v. Towns I-305
v. Upham II-300
v. Van Valkenburgh III-177
Hoppe v. Byers I-425,427
Hopper: Estate of II-633
Hopper v. Hopper I-303, 429. 444
v. Steele II-133
Hoppock v. Tucker II-341, 507
Hopson v. Comr. II-360
v. Skipp II-360
Horah v. Horah II-680. 707
Hord v. Lee II-154
Hormass: Matter of I-649
Horn v. Lockhart III-368
v. Pullman I-11, 23, 24, 45, 47, 60, 428
Hornbeck v. Am. Bib. Soc. II-271, 306, 321, 322
Hornberger v. Hornberger II-302. 307
Hornby: Ex parte II-424
Horne v. Horne I-24
Horner: Appeal of I-800, 805
Horner v. Hasbrouck III-179
v. McGaughy II-610
Horner v. Webster II-847
Horning's Appeal III-220
Horning v. Wiederspalen II-558, III-192
Horry v. Glover II-436, 457
Horsey v. Horsey II-560
Horton v. Archer II-508
v. Cantwell III-507
v. Carlisle III-282
v. Lee II-775, 783
v. McCoy I-800
v. Meercier II-776
Hosack v. Rogers I-693. II-268, III-439
Hoskins v. Gentrey II-273
v. Hoskins II-795
v. Sheldon I-432. III-574, 576
Hosmer v. Sturges II-757
Hosser: Succession of II-887
Hostetter: Appeal of I-711
Hotaling v. Marsh II-346
Houck v. Houck II-281
v. Stauffer III-320
Hough: Estate of II-588
Hough v. Bailey II-135
v. Harvey III-418, 443
v. Hough II-360
Houghton v. Kendall II-362, 381, 388
v. Watson II-717
House v. Ewen II-478, 761. III-508
v. House III-186
Houston v. Bryan II-139
v. Deloach III-368
v. Evans III-478
v. Lane II-791
Houts v. McCluney II-170
Hover v. Penna. Co. II-29
Hovey v. Hovey II-790
v. Newton III-284
v. Page II-26
v. Smith II-215
How v. Waldron II-823
Howard: Estate of II-428
Howard: Matter of II-171. III-3
Howard: Will of I-131
Howard v. Amer. Peace Soc. II-306, 322, 427
v. Barnes II-507
v. Carusi I-239
v. Fessenden I-867
v. Francis II-198, 670, 752, 753
v. Heinerschit III-284. 320
v. Howard I-624. II-708
v. Johnson III-567
v. Leavell II-240, 241
v. Moot I-12, 14, 22
v. Patrick II-24, 50
v. Potts II-253
v. Smith II-786, 790
v. Turner II-565
v. Watson II-788
v. Wheatley II-562, 566
v. Worrill I-628
Howe v. Peabody I-628
v. Wilson II-818
Howell v. Blodgett III-361
v. Craft II-776
v. Duke III-179
v. Hooks II-436, 457
v. Patry II-575
v. Potts II-235. III-583
v. Reams I-642. II-211
v. Sebring I-565
v. Smith I-298, 319
v. Teel III-286
v. Tyler II-365
Howland v. Heckscher II-849
v. Howland II-541, 706, 716
v. Slade II-518
Howle v. Edwards III-580
Howze v. Howze II-471
Hoxie v. Hoxie II-517
Hoxsey v. Hoxsey I-157
Hoye v. Brewer III-217
Hoysradt v. Kingman I-128, 129
Hoyt; Matter of II-692
Hoyt v. Bonnett II-231, 236, 237, 238, 248
v. Daly I-798
v. Hoyt I-392, 415, 674, 675. III-194, 195
v. Newbold I-546
Hubbard v. Barens I-530
v. Bugbee II-73
v. Cox III-560
v. Hubbard I-674, 675, 699. II-662, 664, 670, 750. III-216
v. Johnson III-582
v. Lloyd II-347
v. Russell II-792
v. Selzer II-353
v. Smith I-711
Hubbell v. Hubbell III-219
Hubble v. Bissell I-407
v. Fogertie I-302, 312
Huber's Appeal II-353, 482
Huckabee v. Swoop II-560, 565
Huddleston v. Francis II-234
v. Huey III-470, 471
Hudgins v. Fanning III-507
Hudson v. Hudson II-361, 890, III-660
v. Hulbert III-169
v. Modawell III-686
v. Reeve II-685
v. Wadsworth II-708
Huebner v. Sesseman II-349
Hueston v. Hueston III-582
Huff v. Latimer II-51
v. Thrash III-658
Huffman v. Wyrick III-570
Hufman's Appeal II-875
Huggins v. Huggins II-889. III-561
v. Oliver III-177, 585
v. Toler II-26
Hugh's Appeal II-892, 900
Hughes v. Allen II-825
v. Boyd II-588
v. Burriss I-709, 721
v. Daly II-323, 324
v. Hughes I-240, 245, 411, 634, II-139, 360, 363, 517
v. Kirkpatrick II-646
v. Knowlton II-964
v. Meredith I-164
v. Murtha I-55, 57, 62
v. Washington I-800
v. Whitaker III-578
v. Wilkinson I-423
Hughey v. Eichelberger II-893, 899
v. Sidwell I-693
Huhlein v. Huhlein II-785, 789, III-191
Hule v. McConnell I-119
Huiell: Matter of I-242
Hulin v. Squires II-826
Huling v. Fenner 395, 405
Hull v. Eddy II-565
v. Holloway II-483
v. Hull I-129. III-217
Hulse: Estate of II-215, 846
Hulse: Matter of II-549
Hulse: Will of I-127
Hulton's Appeal III-202
Humbert v. Wurster II-132
Humble v. Humble I-417, 418
Humes v. McFarlane I-5
v. Wood II-438. III-217
Humphrey: Will of I-45, 47, 65
Humphrey v. Merritt III-139
v. Winship II-431
Humphreys v. Burleson III-656, 657
v. Keith III-475
v. Taylor III 473
Humphries v. Davis II-75. III-182
Hunley v. Sherford II-243
Hunt: Appeal of I-808
Hunt: Estate of II-360, 873

Hunt v. Evans I-139
v. Fowler II-302, 323
v. Hunt I-236, 897
v. Kearney II-51. III-473
v. Kingston II-911
v. Mootrie I-127
v. Potter III-506
Hunter v. Bryson I-290
v. Gardenhire I-456, 458
v. Green II-534, 680
v. Hallett II-75
v. Herrick III-582
v. Kelly I-680
v. Lanius III-568
v. Low II-875. III-178
v. Mills III-283
v. Stembridge I-157
Huntingdon v. Spears III-354
Huntley v. Denny II-866
Huntsman v. Hooper I-642
Hurdle v. Outlaw II-461
Hurford v. Haines II-822
Hurlbert v. Bingham III-280
Hurlburt v. Durant I-708. III-443
v. Emerson II-537
v. Hutton I-263. II-195, 623, 624, 890
Hurlburt v. Wheeler I-642
Hurlbut v. Hurlbut III-681
v. Meeker III-580
Hurley: Estate of III-131
v. McIver II-792
Hurst v. Mellinger I-434
Hurtin v. Proal II-912
Hurtt v. Fisher I-800
Huse v. Brown II-169, 172
Huson v. Wallace III-256
Huss: Matter of II-271, 275
Huss v. Rice I 643. II-226
Hussey v. Coffin I-705
v. White III-584
Huston's Case II-750, 753
Huston v. Cassidy III-372
v. Cone II-773, 778, 779
v. Huston I-417
v. Read II-478
Hutcherson v. Pigg I-688
Hutchings v. Baldwin II-155
Hutchin's Estate II-576
Hutchins v. Adams II-87
v. Brooks II-134, 137
v. George II-307
v. State Bank I-363. II-132, III-135
Hutchinson's Appeal II-501
Hutchinson v. Fuller II-440, 632
v. Gilbert III-193
v. Lamcke III-173
v. Newbold III-473
v. Owen II-186
v. Reed III-137
Hutchison: Estate of III-171, 410
Hutton v. Hutton II-899
v. Sawyer I-386
v. Williams II-847. III-421
Hyatt v. Lunnin I-415
v. Burney II-153
v. Pugsley I-417
Hyde: Estate of I-536
Hyde: Matter of I-398
Hyde v. Baldwin II-564, 586, 773, 774
Hyland v. Baxter I-543. II-867
v. Buxton II-720
Hylton v. Hylton I-179
Hyman v. Gaskins I-429
v. Gray III-480
Hyneman: Estate of II-169

I.

Iddings v. Iddings I-425, 492
Ide v. Ide II-575
Idley v. Bowen I-199, 207
Igglesden; Matter of III-178, 286
Ihmesen's Appeal III-370
Ijames v. McClamroch II-186
Ikelheimer v. Chapman II-137, III-480
Ilchester, Earl of, Ex parte I-174
Ilgenfritz' Appeal II-850
Illinois Central Railroad v. Bannon II-33
v. Cragin I-676
v. Hunter II-31
v. Pendergrass II-29
Illinois &c. Loan Co. v. Bonner II 516, 521, 583
Ilsley v. Ilsley I-161
Imhoff v. Witmer I-277
Imlay v. Hamilton III-584
Inches v. Dickinson III-320
Indianapolis v. Grand Master II-303
Inge v. Boardman II-791
Ingersoll: Matter of II-196, 197, 318
Ingersoll: Will of II-320
Ingle v. Jones I-564. II-162
Inglis v. Trustees Snug Harbor II-303
Ingram v. Fraley I-157
v. Girard II-343
v. Smith II-349
Inman v. Jackson I-799
Iowa Loan & Trust Co v. Holderbaum III-208
Ipswich Man'fg Co. v. Story II-627. III-133
Irby v. Kitchell III-377
v. McCrea III-571, 659
Ireland v. Corse III-438
v. Foust II-629
Irish v. Huested I-800
v. Smith I-410
Iron Mfg. Co. v. Gaskell III-314
Irons v. Irons III-478
Irvin v. Clark II-346
Irvin v. Hughes II-869
Irvine v. Newl[illegible] II-385
v. Palmer II-621
Irving v. McLean II-926
Irwin's Appeal III-394, 397
Irwin: Succession of I-243
Irwin v. Backus I-636
v. Dunwoody II-823
v. Scriber I-484, 677
v. Sterling III-560
Isenhart v. Brown II-211, 670, 754, 755
Isler v. Isler II-775
Ison v. Ison II-893, 894, 899
Ivers v. Ivers II-86. III-582
Ives v. Ashley II-139, 140
v. Canby II-633
v. Jacksonville Bank I-325
v. Salisbury I-435
Ivey v. Coleman III-416, 417
Ivin's Appeal II-381
Izard v. Izard II-360, 824
v. Middleton I-10

J.

Jack v. McKee III-280
v. Shoenberger I-252, 256
Jackman: Will of I-55, 58
Jackson's Appeal II-793
Jackson: Matter of III-442
Jackson: Will of II-564. 566, 586
Jackson v. Adams I-12
v. Atwater III-198
v. Babcock I-141
v. Betts I-4, 179. 212
v. Bull II-575
v. Caggin II-353
v. Chase III-357
v. Christman I-129
v. Churchill II-779. 787
v. Coleman II-575
v. Collins II-510
v. Etz I-12
v. Ferris II-155
v. Hammond II-320
v. Hasbrouck I-458
v. Holladay III-171, 177
Jackson v. Holloway I-183, 202, 253
v. Hoover I-9
v. Houston III-176
v. Jackson I-104, 128, 134, 653, II-388, 865, 898, 899. III-437
v. Jeffries I-325, 564
v. Johnson I-628
v. King I-22, 30
v. Kip II-562, 563
v. Kniffen I-179
v. LeGrange I-212, 674
v. McNabb III-509, 511
v. Matsdorf II-894
v. Merrill II-510, 534
v. Payne I-417, 421. III-579
v. Phillips I-159. II-303, 307, 315, 318
v. Potter I-253, 256
v. Roberts I-794. II-341, 506, 830
v. Robins II-675
v. Robinson II-469. III-171
Jackson v. Russell I-459
v. Scanland I-429
v. Scauber I-796
v. Shields III-414
v. Sill I-418, 425
v. Staats II-360
v. Stanley II-424
v. Sublett II-534, 535
v. Thompson I-675. III-508
v. Vandalfsen II-140, 469
v. Van Dusen I-22, 108, 134
v. Weaver III-176
v. Westerfield II-585
v. Westervelt II-170, 753
v. Winne II-620
Jacksonville &c. Co. v. Chappell II-100
Jacob v. Emmett III-414, 416
Jacobs v. Bradley II-322, 570
v. Jacobs III-361
v. Morrow III-133
v. Woodside II-627. III-133

Jacobson v. Le Grange III-281
Jacobus v. Jacobus II-483. III-363
v. Munn III-446
Jacoby: Estate of I-162
Jagger v. Bird II-23
Jahannes v. Youngs I-646
Jahns v. Nolting II-86
Jakolette v. Danielson II-893
Jaliffe v. Fanning I-674
James: Estate of II-756
James v. Adams I-676
v. Beesly III-203, 585
v. Christie II-33, 100
v. Dunstan II-791
v. Faulk III-372, 654, 656
v. Hackley II-154
v. James II-827, 864, 897
v. Johnson III-474
v. Marvin I-230
v. Williams I-721
v. Wingo III-360
Jameson v. Jameson II-245, 540
v. Shelby III-417
Jamison v. Lillard III-396
Janes v. Brown III-207
v. Throckmorton III-513
Janey v. Latane II-272
Janin v. Browne II-237, 243, 244, III-282, 562
Janssen v. Wemple I-449
Jaques v. Horton I-429, 448, 456, 457, 459, 461
Jaquith v. Davidson III-582
Jarden: Estate of II-360
Jarman v. Jarman II-182
Jarnagin v. Conway II-825
v. Frank III-411
Jarratt v. Lynch II-162
Jarvis v. Rogers II-28, III-287, 477
Jasper v. Jasper II-824
Jaudon v. Ducker III-193
v National City Bank II-138
Jauncey v. Shorne I-120
Jayne v. Murphy I-216
Jeffers v. Lamson II-537
Jefferson: Matter of II-235
Jefferson v. Edsington II-227
Jefferson College v. Dickson II-239
Jefferson County Bank v. Robbins II-101
Jeffersonville &c. R. R. v. Hendricks II-30
Jeffersonville R. R. Co. v. Swayne I-707, 708
Jeffries v. Lawson III-396
Jenckes v. Smithfield I-41
Jenkins: Will of I-106, 114
Jenkins v. Cain II-235
v. Drane II-912, 918
v. Fowler II-472
v. Freyer II-341, 342
v. Hall II-354
v. Hannaham II-441, 453
v. Jenkins II-211, 253, 389. III-652
v. Keith I-636
v. Lawrence I-254
v. Mitchell II-889
v. Sapp I-380, 701
v. Shaffer I-633
v. State I-644
v. Tobin I-66
v. Van Schaack I-269
v. Wood III-561
Jenks v. Terrell II-226, 872, III-360
v. Trowbridge II-911
Jenness v. Hazleton I-25
Jennings v. Barry II-482, 621
v. Bowder III-576
v. Copeland III-356
v. Davis III-366
v. Jennings II-559, 560, 777, 785
v. LeBreton I-699, 714
Jennings v. Moses I-700
v. Smith II-785, 787
v. Weeks III-360
v. Wright III-562, 584
Jennison v. Hapgood I-443, II-176, 194, 196, 197, 926, III-178, 414, 417, 446
Jerome v. Jerome II-153
Jesse v. Parker I-134
Jessup v. Jessup II-22
v. Spears III-477
Jewell: Estate of III-188
Jewell v. Knettle II-874
Jewett v. Hurrie II-212
v. Weaver II-27, 250
Jillett v. Union National Bank II-211, III-219
Jochumsen v. Suffolk Savings Bank I-678
Johannes v. Youngs I-640, 641, 646, II-180
John: Estate of II-341
John v. John III-440, 441
v. Tate III-352
Johnes v. Beers II-519
Johns v. Caldwell I-598
v. Norris II-139
Johns Hopkins University v. Pinckney I-229
v. Williams III-139
Johnson: Appeal of I-625, II-381, 399, 887
Johnson: Estate of I-21, 51, 126, 147, III-373
Johnson: Matter of III-6
Johnson: Will of I-199, 208, 457, 458, 460
Johnson v. Ames III-138, 660
v. Baker II-518, 546
v. Bartlett I-818
v. Beardslee II-153, III-577
v. Beazley I-675, 700, III-170
v. Belden II-895, 897
v. Belt II-234
v. Bennett I-800
v. Bowden II-155
v. Brady III-652
v. Brailsford I-184, 194, 201
v. Bridgewater Iron Manuf. Co. II-50
v. Brown I-179, III-580
v. Champion III-581
v. Clark III-170
v. Copeland II-926
v. Corbett II-215, 242, 869, III-186, 187, 394, 397
v. Cornwall III-191, 202
v. Crepenning I-700
v. Currrin II-542
v. Dawkins I-648
v. Dobbs II-214
v. Eicke III-414
v. Farrell III-185, 194, 217, 221
v. Flanders III-505
v. Fuquay I-640, III-375
v. Glasscock I-169, 170
v. Goss II-442, 443, 444, 462, 493, 704, 792, III-187
v. Harrelson II-510
v. Hedrick III-417
v. Henagan II-195, 198, 739, III-411, 421, 422
v. Henry II-874
v. Hollfield II-276, 826, III-414, 445
v. Holliday III-665
v. Home for Aged Men III-194
v Hoyle II-646, 894
v. Jackson I-432, III-615
v. Jacob II 349, 537
v. Johnson I-306, 418, 423, 529, 532, 533, 676, 677, II-252, 354, 371, 506, 793, 830, 865, III-376, 395
v. Johnstone II-399
v. Jones II-739, III-510
Johnson v. Kay III-418
v. Knights of Honor II-865
v. Lawrence III-443
v. Maples III-355, 364
v. Mayne II-805
v. M. E. Church I-9
v. Molsbee III-659
v. Patterson II-898, 898, 900
v. Poulson III-194
v. Powers I-430
v. Sharp I-77
v. Smith I-483, 653, II-22
v. Sormans I-152
v. Thompson II-154
v. Turner II-159
v. Valentine II-344, 518, 524, 565
v. VonKettler III-667
v. Wallis I-433, III-515
v. Walworth III-567
v. Warren II-563, 566
v. Waters III-567, 658
v. Wilcox I-386
v. Williams I-87
Johnston: Estate of II-135
Johnston v. Chesson II-912
v. Davenport II-873
v. Duncan I-309, II-781, 789
v. Fort II-851
v. Lewis II-113
v. Morrow II-196, III-320
v. Smith I-484
Jones: Appeal of II-345, 750, 850, III-412
Jones' Case III-442
Jones: Estate of I-626, II-373
Jones: Matter of II-693, III-319
Jones v. Bittinger I-707
v. Boulware II-242
v. Brown I-897
v. Caldwell I-804
v. Chase III-132
v. Clark II-136
v. Commercial Bank II-852, III-208
v. Creveling II-603
v. Deyer III-558
v. Dorr I-468
v. Drewry II-242, 245
v. Duff I-397
v. Earls I-229
v. Gerock II-784, 927, III-138
v. Graham III-288, 356, 359, 656
v. Habersham I-138, 697, II-281, 288, 302, 303, 307, 316, 325
v. Hammett III-424
v. Hanna II-139
v. Hartley I-240, 255
v. Jones I-180, 271, 419, 426, 539, 632, 721, 802, II-344, 352, 354, 493, 774, 779, 784, III-368, 439, 443, 444, 507, 564, 575, 581
v. Knappen II-534, 795
v. Larrabee I-403
v. Le Baron II-197, III-176, 176
v. Leeman II-562
v. Levi III-167
v. Lloyd II-774
v. Lockland III-139
v. McCleod III-470, 476, 586
v. Meth. Episc. S. S. II-272
v. Miller II-362
v. Morris III-371
v. Murphy I-239
v. Oliver II-350, 398, 399
v. Orton III-369
v. Parker III-565
v. Perry II-839
v. Powell II-782
v. Price II-547
v. Richardson I-626, II-75, 181
v. Ritter I-634
v. Roberts I-23, 58, 64, 66, 427
v. Shewmake I-355
v. Sikes' II-800
v. Slaughter III-371
v. Stiles II-565, 700
v. Tuck I-131

Jones v. Walker II-572. III-318
v. Waters II-534
v. Whitehead I-529
v. Woodstock Iron Co. III-172
Joralemon v. Van Riper I-565
Jordan v. Ball I-531
v. Brown III-320, 574
v. Clark II-762
v. Hunt III-416
v. Jordan I-151, 152
v. Polk I-611
v. Roach II-362
Jordan v. Thompson I-592
Joseph v. Utitz II-564, 579
Joslin v. Caughlin II-133, 137, 138
Jost v. Jost II-385
Joyce v. Hart III-573
Joyner v. Conyers II-139
Judah v. Fredericks III-480
Judd v. Bushnell II-560
v. Warner III-367
Judevine v. Judevine II-575
Judge of Probate v. Adams I-626
Judge of Probate v. Chamberlain I-530
v. Claggett I-629
v. Mathes I-641
Judson v. Connolly III-510
v. Gibbons I-334. III-206
Judy v. Williams I-418
Juillard v. Orem III-513
Julian v. Abbott III-354
v. Boston &c. R. R. Co. II-776
v. Rogers III-578
v. Wrightsman II-866

K.

Kaes v. Gross II-785, 793
Kahl v. Schober I-51, 133
Kahn v. Johnson II-236
Kain v. Fisher I-843. II-871
v. Gibbony II-317
Kaiser v. Kaiser II-384
Kalbfleisch v. Kalbfleisch II-434. III-189
Kalckhoff v. Zoehrlaut II-86
Kaminer v. Hope I-593, 636, 650, 653. III-559
Kammerer v. Ziegler III-177
Kane: Estate of I-155
Kane: Matter of II-724
Kane v. Bloodgood III-659
Kansas Pacific Railway Co. v. Cutter I-431, 439. II-30, 34
Kanter v. Peyser I-431
Kapp v. Public Admr. II-871
Karr v. Karr III-414
Kaster v. Kaster I-458
Kauffman's Appeal II-874, 875
Kauffman v. Wooters I-303
Kaufman: Will of I-237
Kavanagh: Matter of II-286
Kavanagh v. Wilson III-177
Kavannaugh v. Thompson II-114. III-394
Kayser v. Hodopp II-781, 791
v. Leigh III-562
Kean: Will of I-242
Kean v. Welch II-644
Keane: Estate of I-701, 712
Kearney v. Cruikshank II-481
v. Kearney I-387, 388, 545. II-695, 752
v. McKeon II-247. III-282
v. Missionary Soc. I-530, 802, II-273, 288, 479, 855,
v. Oncken II-267
v. Sascer III-584
Kearns v. Dean II-236
v. Kearns I-212, 457
Keates: Estate of II-633
Keaton v. Campbell III-135
Kechele: Goods of I-540
Kee v. Kee III-361, 378
Keef: Matter of II-846
Keefe v. Malone III-584
Keegan v. Geraghty II-913
Keehan v. Fries II-751, 752
Keeler's Appeal III-360
Keeler v. Harper I-803
v. Trueman III-473
Keenan: Estate of I-532. II-362
Keenan v. Saxton II-233
Keene: Estate of I-625
Keene v. Munn III-186, 217
Keener v. Zartman III-579
Keily v. Quinn II-86
Keiper's Appeal II-633
Keith v. Copeland II-751
v. Ham I-313
v. Jolly II-799, 851
v. Keith I-679, 680
v. Parks II-235
Keithley v. Stafford I-409
Keleman: Matter of II-237
Kellar v. Beelor II-52
Kellberg: Appeal of I-702
Kelleher v. Kernan I-153
Keller v. Myers III-586
v. Ogsbury I-805. III-653
v. Stuck II-242, 247, 911. III-281
v. West &c. Co. II-53. III-470
Kellett v. Rathbun III-365, 416
v. Sheppard II-341
Kelley v. Ball II-788
v. Boston &c. R. R. II-32
v. Mann II-159, 160, 649. III-182
Kellogg's Case III-444
Kellogg: Matter of III-373, 374, 424
Kellogg v. Beeson III-510
v. Graves II-872
v. Johnson I-676
v. Mit I-424
Kellow v. Central &c. R. R. II-29
v. Westcombe I-305
Kellum: Matter of I-709, 711
Kelly: Estate of I-535. III-174, 281
Kelly v. Ball II-227
v. Davis II-846
v. Dike II-518, 546
v. Karsner II-894
v. Kelly I-418. II-112. III-655
v. Lively III-653
v. Love II-304
v. McGuire I-410
v. Miller I-41, 119
v. Moore II-872
v. Nichols II-827
v. Reynolds II-491
v. Riley II-108
v. Stinson II-787
v. Strong III-282
v. West I-651, 676, 718
Kelsey v. Deyo III-191
v. Hardy II-911
v. Kelsey II-897. III-508
v. Smith II-113
v. Snyder III-580
v. Van Camp I-627
v. Western II-760. III-189, 200, 202
Kelso v. Cuming II-517, 546, 562, 565, 566
v. Dickey II-519, 541
v. Vance II-188
Kelton v. Jacobs III-580
Kemp v. Holland II-789
v. McPherson I-5, 94
Kempsey v. McGinness I-25
Kempton's Appeal II-792
Kenan v. Du Bignon III-480
v. Hall III-417
Kendall v. Bates III-362
v. Gleason II-380
Kendrick: Matter of III-566, 576
Kenlston v. Adams II-500
v. Little III-586
Kenley v. Bryan III-179, 180
Kenna v. Smith I-818
Kennard v Kennard II-453
Kennedy: Appeal of I-159. II-560
Kennedy: Estate of III-180
Kennedy: Matter of III-197, III-417
Kennedy v. Adickes I-641, 653
v. Badgett II-623
v. Gruell III-441, 656
v. Kennedy II-382
v. Medrow II-779, 787
v. Mills II-782
v. Standard Sugar Refy. II-29
v. Upshaw I-118, 184, 190
v. Wilson II-24
Kenny v. Kenny I-428
v. Public Administrator I-897
Kenrick v. Cole II-301
Kent v. Barker II-887
v. Bothwell II-86
v. Cloyd III-653
v. Dunham II-311, 751, 754, 755, 756. III-575
v. Kent III-660
v. Mahaffey I-189
v. Pennsylvania R. R. Co. I-898
Kenworthy: Matter of III-441
Kenyon v. Lee II-562, 566
v. Pierce III-580
v. Talbot III-178
Keowne v. Love I-636
Kerchner v. McRea III-312
Kerlin v. Bull II-518
Kernochan: Matter of III-413, 436
Kernochan v. N. Y. Elevated Rwy. Co. II-53
Kerns v. Soxman I-118
Kerr v. Bosler II-757, 829
v. Dougherty II-286, 287, 288, 750, 827
v. Kerr I-701, 702
v. Kirkpatrick III-394
v. Lunsford I-24, 47, 49, 58
v. Moon I-673
v. Waters III-396
v. Wimer II-213, 215
Kerrigan v. Kerrigan II-694, 799
Kersey v. Bailey II-867
Kershaw v. Kershaw II-900
v. Whitaker III-315
Kesler v. Manney III-581
Kessinger v. Kessinger I-62
Kessler v. Hessen II-170
Ketchum v. Stearns I-62, 107
Keteltas: Matter of III-370
Keteltas v. Keteltas II-399, III-507
Kevil v. Kevil I-63
Key v. Griffin II-778
v. Hughes III-368
v. Jones II-783, 890, 900. III-358, 359, 435, 654
Keyser: Appeal of III-566
Keyser v. Kelly II-234. III-411
Keyzey's Case III-187

Kibbe: Estate of II-185, 238
Kidd: Estate of I-631
Kidder: Estate of I-456, 458
Kidwell v. Brummagin I-564, 565
v. Kidwell I-843, III-182
Kihler v. Whiteman II-516
Kilbreth v. Root III-172, 176, 180
Kilburn v. See I-294, II-162
Kilgore v. Kilgore II-343
Killam v. Costley I-706
Killcrease v. Killcrease I-635, II-73
Killen v. Lide III-580
Killough v. Hinton III-169
Kilpatrick v. Barron III-372
v. Helston III-281
Kilton v. Anderson I-561
Kimball v. Chappel II-373, 427, 500, 826
v. Crocker II-516, 517
v. Deming II-869
v. Lincoln III-316, 372
v. Story II-395, 499, 513
v. Sumner II-51, 198, III-183
v. Tilton II-547
v. Universalist Soc. II-306, 321
Kimbrough v. Curtis II-26
v. Mitchell II-28
Kimmell v. Burns III-179
Kinard v. Young I-312
Kincaid v. Beatty III-509
Kine v. Becker II-289
King's Appeal II-871
King: Estate of II-750, 754, 756, 895
King: Matter of III-176
King v. Beck II-382
v. Beeler III-562
v. Berry II-196, III-415, 558, 659
v. Boyd III-510
v. Bullock I-676
v. Cabaniss III-171
v. Clarke III-515
v. Crawford II-520
v. Grant II-305, 426, 546
v. Green II-112
v. Gridley III-202
v. King I-805, II-501, 518, 541, 824
v. Kinsey I-133
v. Lyman I-306
v. Lynch II-645
v. Pouton I-207
v. Savage III-390
v. Shackelford III-397
v. Skellie II-682
v. Strong II-826
v. Talbert I-564
v. Talbot II-752, 755, III-368, 370
v. Vairin I-117
v. Woodhull I-800, 802, II-285, 826
v. Worsley II-891
Kingman v. Harmon II-521
v. Kingman II-867
v. Soule I-364, III-314
Kingsbury's Appeal II-896
Kingsbury v. Scovil II-865
v. Whitaker I-34
v. Wilmarth II-874
Kingsland: Matter of III-174
Kingsland v. Leonard II-350
v. Murray III-174
v. Rapelye II-389
v. Scudder II-195
Kingsley v. Blackmer II-460
Kinike: Estate of II-818
Kinnaird v. Miller II-305
v. Williams II-773, 789
Kinnaman v. Kinnaman I-386, 397
Kinnan v. Wright II-248, 268, III-373
Kinnard v. Kinnard II-707
Kinne v. Johnson I-24, 60
v. Kinne I-18, 24, 45, 410
Kinnebrew v. Kinnebrew I-354
Kinney v. Central R. R. II-32
v. Emery III-657
v. Ensign II-627
v. Kinney II-286, 306, 491, 873
Kinsey v. Lardner II-517
v. Woodward II-773, 788
Kinter v. Jacobs I-158
Kirby's Appeal II-896
Kirby v. Clark II-27
v. Coles III-421
v. Lake Shore etc, Railroad III-479
v. State III-364
v. Turner I-629
v. Wilson II-214
Kirchles v. Scherg I-532
Kirk: Estate of II-547, 792, III-188
Kirk v. Cushman II-360
v. DeBois II-53
v. King II-305
v. McCusker I-897
v. Weiant I-351
Kirkland v. Narramore II-595
Kirkman v. Mason II-565
v. Phipps III-506
Kirkpatrick: Will of I-183, 195, 411, 534, 563
Kirkpatrick v. Chesnut III-191
v. Gibson II-799
v. Pyle I-154
v. Rogers II-364
v. Taylor III-476
Kirtlam: Estate of I-546
Kiser v. Kiser II-380
Kitchell v. Beach I-11, 54, 424, 425
v. Young III-197
Kitchenman: Estate of III-171
Kittredge v. Folsom I-364, 700
Kleberg v. Bonds II-135
Klein: Estate of I-358
Klein v. French II-52, III-360, 372
v. Hayck II-431
Kleppner v. Laverty II-389
Kline: Appeal of I-250, II-670, 845, III-198
Kline: Estate of III-415, 416
Kline v. Moulton II-50, III-182, 473
Klock v. Burger II-471
Klosterman: Matter of II-873
Knapp: Matter of II-196
Knapp v. Hanford III-582
v. Lee I-433, III-478
v. Reilly I-97
v. Winsor II-911
Knaub's Appeal III-196
Kneal v. Knox &c. R.R. II-24
Knecht's Appeal II-453, 676
Knickerbocker v. Decker III-173
Knight: Matter of III-363
Knight v. Bunn I-422
v. Haynie III-395
v. Knight I-352, II-350, 382, III-130
v. Lasseter II-161
v. Loomis I-564, III-366, 414
v. Mahoney II-568
v. Oliver II-865, 890
v. Russ III-579
v. Weatherwax II-349, 537
Knighton v. Young II-787
Knippenberg v. Morris III-563, 575
Knorr v. Milliard II-344, 347
Knotts v. Bailey III-193
Knowles v. Maley III-564, 568
Knowlton v. Johnson II-847
Knox v. Bigelow III-474
v. Knox I-158, II-303
v. McCall III-576
v. Met. Elevated R. R. Co. II-53
v. Newman I-287, 292
v. Paull III-657
v. Pickett III-393
v. Schepler I-793
Koch: Estate of II-870, III-437
Koehler v. Adler III-582
Koger v. Franklin I-539, 701, 708
Kohler v. Knapp I-484, II-50, III-135
Konvalinker v. Schlegel II-788
Koon's Appeal II-751
Koon v. Munro II-135, III-356, 359, 368, 416
Koons v. Koons III-360
v. Mellett II-619, III-204
Koppenhaffer's Appeal II-707
Kortright v. Storminger I-565
Kost's Appeal III-320
Kramer v. Weinert I-414
Krebs v. Krebs II-899
Kreider v. Boyer II-643, 649
Kreiser's Appeal II-781, 791
Kringle: Estate of II-568
Kropff v. Potts I-431
Krout's Appeal II-912
Kruger v. Ferry III-186
Krutz v. Stewart III-377
Kuhn v. Webster II-510, 546
Kumpe v. Coons II-281, 538
Kunkel v. Macgill II-443
Kurtz: Estate of II-362
Kyle v. Barnett III-419
v. Conrad II-893, 898, 900
v. Kyle III-422
v. Perdue I-153
Kyne v. Kyne II-605, 789

L.

Labane v. Hopkins II-568
Labarge v. McCausland II-25
LaBau v. Vanderbilt I-23, 24, 25, 65, 427
Labranche v. Trepagnier I-538
Lacey v. Davis III-365, 367, 369, 370, 397, 444
v. Laughridge II-234
Lachland v. Downing II-354
Lackawanna Iron & Coal Co.'s Case II-481
Lacosta v. Spivalo I-635
Lacoste: Estate of III-364
Lacy v. Stamper I-626, 641
Ladd: Will of I-179-228
Ladd v. Harvey I-94
v. Wiggin I-818, II-132
Lafferty v. Turley III-659
Lafont v. Ricaud III-414
Lafoy v. Campbell II-541
Lagarde: Succession of III-358
Lagerevennes: Estate of II-540
Lagow v. Glover I-354, 495
Lagrange v. Rogers II-275, 303, 313
Lagwin v. McKee II-535
Laible v. Ferry III-319

Laied: Appeal of I-801. II-342
Laing v. Barbour II-825
Laird v. Arnold II-172. III-176, 314
Lake v. Copland II-438, 676. III-221
v. Hardee I-432
v. Park III-415
v. Ranney I-59, 415
Lamar v. Sheffield III-472
Lamb v. Carroll II-898
v. Forsyth II-825, 830
v. Girtman I-131, 132
v. Helm I-363, 593
v. Lamb I-425. II-133, 545, 756, III-414
Lambe v. Eames II-406
Lambert v. Cooper I-145
v. Craft II-248
v. Harvey II-540
v. Hooper I-388
v. Mallett III-506, 586
Lambrecht v. State I-639
Lamon v. Hackett III-666
Lampert v. Haydel II-574
Lamport v. Beeman III-187
Lamson v. Hansbrough II-252
v. Schutt III-175, 201, 574
Lancaster Bank Appeal II-559, III-192
Lancaster v. Blaney III-581
v. Dolan I-76
Lancey v. White III-569
Land Co. v. Hill II-346, 538
Landers v. Bartle II-535
v. Stone I-563, 573
Landis v. Epstein II-718
v. Saxton III-366
Landreth v. Landreth III-376
Landry v. Tomatis I-117
Landwehr: Estate of II-343
Lane: Appeal of I-129, 130
Lane: Matter of II-647
Lane v. Brown II-535
v. Lane I-144, 159, 405. II-587, III-562
v. Lewis I-627
Laney: Matter of III-319
Laney v. Laney III-319
Lang: Estate of I-51, 64, 67, 198, 199. II-508, 789
Lang v. Howell II-800
v. Pettus II-717
v. Waring I-798
Langan: Matter of I-114
Langan v. Bowman I-532, 533
Langbein: Estate of I-443
Langdon v. Astor I-258. II-645
v. Ingram II-574, 575, 576
Lange: Estate of III-131
Lange v. Dammier I-385, 386
Langford v. Frey III-561
v. Langford I-611
Langham v. Baker III-374, 577
Langley v. Dodsworth III-580
v. Harris I-625
v. Mayhew II-798, 873
Langlois: Matter of III-421
Langmade v. Hamilton I-545
Langsdale v. Woollen I-574
Langston v. Marks I-674
Langstroth v. Golding II-440, 828, 830. III-190, 193, 201, 219
Langton: Estate of I-561. II-180
Langton: Will of I-53, 56, 59, 164
Langwin: Matter of I-397
Langworthy v. Baker I-699
v. Chadwick II-708
v. Golden III-193
Lanier v. Brunson III-563
v. Griffin III-217
v. Irvine I-629, 644, 652. III-560
Lank v. Kinder II-152
Lankford v. Barrett II-32
Lann v. Ladd II-444
Lanning v. Cole III-513
v. Lanning III-580
Lanning v. Sisters of St. Francis I-564. II-424, 426
Lansdell v. Winstead I-641, 649, II-160
Lansing v. Haynes III-667
Lantz v. Abbott II-760
v. Boyer I-565. II-162
v. Moffett III-173
v. Trusler II-515, 537
Lapham v. Morris II-694
LaPlainte v. Convery II-212, 236
Laporte v. Bishop II-751, 757
Lappin v. Munford II-22, 134, 137
Lapsley v. Union Pac. R. R. II-33
Larabee v. Ballard I-127
v. Tucker II-912
Large's Appeal III-184
Large v. Large II-249
Lark v. Linstead II-3.0, 678, 679
Larkin v. Larkin III-191
v. Salmon II-440, 755
Larkins: Estate of III-281
Larmour v. Rich. II-541
Larned v. Bridge II-162
Larocque v. Clark II-534
Laroe v. Douglass III-395, 396
Larrabee v. Van Alstine II-779, 787
Lary v. Stamper III-355, 357
Larzelere v. Starkweather III-168
Lasak: Matter of I-405, 538, 563, II-194, 752, 755
Lash v. Lash II-911
Lasher v. Lasher II-779, 787
Lashlee v. Jacobs III-582
v. Wiley III-479
Lassell v. Reed I-868
Latham v. Schaal I-55, 63, 65
Lathrop v. American Board of Foreign Missions I-36. 42
v. Borden I-42
v. Dunlop I-237
v. Smalley III-415, 445, 446
v. Smith I-582
Latimer v. Sayre II-211, 214
v. Sullivan II-678
Latourette v. Williams II-74
Latrobe v. Tierman II-186, 152
Latta v. Miller II-132
Latz: Matter of II-162. III-412, 570
Laughlin: Estate of I-804, III-200
Laughlin v. Heer III-207
Laughton v. Atkins I-193, 201, 280
Laurens v. Lucas II-559. 571
v. McGrath III-216
v. Read III-194, 217
Lautenshlager v. Lautenshlager I-148, 151
Lauterman v. Lauterman III-513
Laval v. Staffel II-576
Lavin v. Emigrant Savings Bank I-678
Law v. Law I-196
v. Porter II-75
v. Smith II-649, 896
Lawall v. Kreider II-170
Lawley's Appeal II-873
Lawrence: Appeal of I-380, 831, 484, 544, 612. II-784. III-134, 169, 174
Lawrence: Goods of I-722
Lawrence: Matter of III-417
Lawrence: Will of I-701
Lawrence v. Cooke I-159
v. Elliott II-288
v. Embree II-750, 753, 756
v. Hebbard II-360. 362, 510
v. Kittredge II-926, 927
v. LaCade III-580
v. Lawrence II-645, 649
Lawrence v. Mitchell II-890
v. Nelson III-424, 505
v. Norfleet III-564, 568, 570
v. Parsons I-592, 593
v. Security Co. II-696
Lawrence Co. v. Leonard II-275, 313
Lawrie v. Lawrie I-450
Lawson's Appeal II-895
Lawson v. Hansbrough III-375
v. Lawson III-471
v. Powell III-582
Lawton v. Buckingham III-584
v. Corlies II-382
v. Fish III-320
Lawyer v. Smith I-187, 207, 411
Lay v. Clark II-241
v. Lawson II-137
v. Lay I-298, 294. II-158, 692, III-447
v. Mechanic's Bank II-235
Laycock v. Oleson III-474
Layman: Will of I-23
Layman v. Conrey I-55, 58, 63
Laytin v. Davidson III-412, 442
Lea v. Beaman III-353
v. Hopkins II-102
Leach v. House I-812
v. Jones III-352
v. Leach II-779, 781, 782
v. Peabody I-358
v. Pillsbury I-298. II-926
v. Prebster II-781, 782, 791
Leadenham v. Nicholson I-800
Leader v. O'Loughlin II-829
Leaf's Appeal III-185
Leahey: Matter of II-160
Leahy v. Cardwell II-824
Leake v. Gilchrist I-484. III-476
v. Leake II-800. III-207
Leaning v. Sisters of St. Francis I-423
Learned: Estate of I-148
Leary: Estate of II-288
Leasman v. Nicholson III-581
Leatherwood v. Arnold I-795
v. Sullivan I-626, 628, 674. 843, III-472
Leavenworth v. Marshall II-867
Leavitt v. Leavitt I-561
v. Wooster III-190, 192
Leaycraft v. Simmons I-47, 164
Leazure v. Hillegas II-821
Lebanon Savings Bank v. Waterman III-178
LeBaron: Matter of II-227, 251
Lebaron v. Long Island Bank II-137
LeCount v. LeCount III-411
Leddel v. Starr I-693. III-657
Leddell v. McVicker II-226
Ledyard v. Johnson III-375
Lee's Appeal III-188, 218
Lee: Case of I-651
Lee: Estate of II-75
Lee v. Babcock II-700
v. Boah I-897. II-643
v. Chase I-312. II-22. III-132
v. Chisholm III-659
v. Cooke III-284
v. Dill I-59, 164
v. Downey III-472. 566
v. Foard II-382
v. Gardner III-583
v. Gay II-513
v. Lee II-345. III-195, 280
v. Patrick II-240
v. Prindle I-229
v. Scudder I-41
v. Shankle II-887
v. Shivers II-502
v. Smith II-441. 632
v. Templeton I-349
v. Tower II-793
v. Turner III-472
v. Wheeler II-75

Leech's Appeal II-757
Leedom v. Lombaert I-675
Leeds v. Shaw II-275, 302, 316
v. Wakefield II-520
Leeke v. Beanes II-183
Leeper v. Taylor I-63. III-578
Lees v. Browning I-701
v. Wetmore I-566
Lefevre v. Hasbrouck III-364
v. Lefevre I-422, 426. II-296, 322, 427, 779, 792, 830
v. Toole II-785. III-195
Leffingwell's Appeal III-131
Lefler v. Rowland II-496
LeFoy v. LeFoy II-618
Legare v. Ashe I-208, 212
Legg v. Myer I-46. 392
Leggate v. Moulton II-27
Leggatt: Matter of III-441
Leggett v. Hunter II-155
Le Grand v. Darnall II-269
Lehman v. Bradley III-177
v. Worley III-176
Lehr's Appeal III-424
Leib v. Wilson II-871
Leigh: Estate of II-621
Leigh v. Savidge I-418, 419. III-185, 194. 195
v. Smith III-574
Leighton v. Leighton II-534
v. Orr I-710
Leinaweaver v. Stoever II-783
Leinkauf: Matter of III-443. 444
Leitch v. Wells II-136
Leith v. Carter III-575
Leland v. Felton II-625. III-133, 356
v. Kingsbury II-844
v. Newton III-318
v. Whitaker I-886
Lemacks v. Glover II-349
Lemen v. McComas II-516
Le Moyne v. Harding III-183, 204
v. Quimby III-183
Lemuel v. Pauska III-584
Lenderman v Talley II-78
Lenehan v. Spaulding II-911
L'Engle v. L'Engle III-312
Lennig: Estate of III-186
Lenoir v. Winn II-268. III-398
Lent v. Haward I-799, 805, 806
Lentz v. Hertzog II-896
v. Pilert I-534
Lenz v. Prescott II-540
Leonard: Estate of II-578
Leonard v. Blair III-205
v. Columbia Steam Navigation I-677. II-29
v. Crommelin II-777, 780
v. Davenport II-271, 427
v. Steele II-777, 780. 787
Leonardson v. Hulin I-178
Lepage v. McNamara II-313, 315
Lepard v. Skinner II-824
Lepps v. Lee II-541
Lerch v. Overly III-178
Le Rougetel v. Mann III-195
Leroy: Matter of I-630
Lesesne v. Witte I-157, 158
Lesher v. Wirth II-866
Leslie's Appeal III-372
Leslie: Matter of II-624
Lessley v. Lessley II-773
Lester v. Mathews I-611. II-194
v. Pittsford I-410
Letchworth's Appeal II-514, 518, 524
L'Etourneau v. Henquenet II-539
Letson v. Letson III-190
Lett v. Emmett I-706
Leuchterhand v. Sears III-667
Leutchford v. Lord III-582
Levan: Appeal of I-534, 540
Levengood v. Hooper II-588
Leverett v. Dismuke I-529, 539
Levering v. Levering I-694, 707, II-250
v. Riggs III-440, 445
Leviness v. Cassebeer II-227
Levison: Estate of II-851
Levy v. Barrett II-497
v. Levy II-285, 300, 317, 322, 323
v. Riley I-705. III-170
Lewis' Appeal II-892
Lewis: Case of I-631
Lewis: Estate of I-353. II-307, III-179
Lewis: Matter of I-46, 47
Lewis: Will of I-24. II-193
Lewis v. Adams I-431, 433. III-476
v. Aylott I-168, 372. II-281
v. Bolitho I-397
v. Brooks I-573
v. Carson II-824
v. Champion II-246. III-315, 577
v. Darling III-193
v. Fisher II-373, 374
v. Ford III-190, 204, 577
v. Gambs I-635
v. Grognard II-182
v. Henry II-566, 646
v. Jones I-52
v. Lewis I-20, 95, 111, 120, 124, 147, 179, 183, 419, 457. II-362, 775
v. Lusk II-183
v. McCabe I-299
v. McGraw III-205
v. Mason I-68. III-375
v. Ocean Navigation &c. Co. I-868
v. Overby III-208
v. Rango I-817
v. Reed II-133
v. Scofield I-10
v. Smith II-680, 788
v. Soper II-102
v. Steiner II-875
v. Watson I-643
Lex's Appeal II-789
Ley v. Edwards III-581
L'Hommedieu: Matter of II-826
Libbey v. Mason I-539
Libby v. Christy II-132
v. Cobb I-598. III-506
v. Mayberry II-132
Lichtenberg v. Hardtfelder III-564
Lichtenstadter: Matter of II-718
Liddel v. McVickar III-168, 171, 173, 175, 412, 422
Liddicoot v. Treglown I-358, 641
Liggat v. Hart I-265
Light: Estate of III-477
Light v. Leiniger III-477
v. Light II-781
Lightcap's Appeal III-396, 397
Lightfoot v. Cole III-567
Lightner v. Lightner II-720
Ligimger v. Field II-900
Ligon v. Bishop III-480
v. Spencer II-792
Like v. Cooper II-788
Likefield v. Likefield II-561
Lilly v. Curry II-686
v. Stahl II-845
v. Tobbein II-272, 301
v. Wooley III-172, 173, 174, 175
Lima &c Co. v. Deubler II-31
Limekiller v. Hannibal &c. R.R. II-30
Linch v. Linch III-580
Lincoln v. Perry II-380
Linder: Estate of I-629
Linder v. Newson II-588
Lindley: Ex parte II-304, 315
Lindley v. O'Reilly I-480
v. State I-641, 643
Lindsay: Estate of II-707
Lindsay v. Richardson III-444
Lindsey v. Lindsey II-558, 565, 584
Lindsley: Appeal of I-803
Linell v. Linell II-892
Lines v. Darden I-156, 158
v. Lines III-137, 656
Lingan v. Carroll II-827
Lingen v. Lingen II-888
Lingle v. Cook I-358, 644, 709, III-359
Linman v. Riggins II-140. III-175
Linn v. Day II-236
Linnard: Appeal of I-162
Linsay v. Linsay I-272
Linton: Appeal of I-33, 67
Linton: Succession of III-439, 441
Linton v. Crosby II-673
v. Laycock II-518
Lippincott v. Lippincott I-798
v. Pancoast II-517
v. Stokes III-438, 652
Lipse v. Spear III-858
Liscomb v. Postell I-658
Lisk v. Lisk II-871, 873
Lisle v. Tribble III-283
Litchfield v. Cudworth II-140, III-419
v. Flint III-474, 475
Literary Fund v. Dawson II-305
Litterall v. Jackson III-183
Little's Appeal II-563, 578
Little v. Bennett I-159
v. Berry I-563
v. Bidwell II-588
v. Birdwell II-867
v. Chadwick II-214
v. Cook II-183
v. Dawson III-280
v. Duncan III-575
v. Knox I-680
v. Little II-242
v. McPherson II-873
v. Williams II-172
Littlefield v. Eaton III-131, 182, 576
v. Flint III-480
Little Rock &c R. R. v. Townsend II-34
Little Sisters v. Cushing I-398
Livermore v. Wortman III-364
Livingston v. Cochran III-180
v. Combs III-423
v. Courts I-645
v. Gordon II-564, 566
v. Greene II-524, 534
v. Livingston I-240, III-218, 219
v. Murray I-797, II-705
v. Newkirk III-175, 216, 218, 219, 220
v. Noe III-171
Lloyd: Estate of II-874. III-416
Lloyd: Matter of III-421, 428
Lloyd v. Lloyd I-378, III-219
v. Van Antwerp II-533
Lochenmeyer v. Fogarty II-182
Locke v. Locke II-396
Lockerman v. McBlair II-341
Lockhart v. White II-870, III-375
Lockland v. Public Administrator III-362
Lockman v. Hobbs II-353
v. Reilly III-184
Lockwood v. Carr II-215
v. Robbins III-281
v. Stockholm II-75. III-208. 655
v. Weed II-305
Loder v. Hatfield II-515, 544, 560, 751. III-191, 198, 571
v. Whelpley I-405, 415, III-581
Lodge v. Hamilton II-74
Loeb v. Richardson II-874, III-199
Loeven: Estate of II-851

Loewenstine: Matter of I-415
Lofton v. Moore III-199, 202, 203
Logan: Estate of II-432
Logan v. Bremen II-195
v. Caldwell II-51
v. Dixon III-286
v. Logan II-795
Lombaert's Appeal III-201
Lombard v. Boyden II-381, 384, 506
Lommen v. Tobeason II-181
Long: Estate of III-353
Long v. Clegg III-566
v. Duvall I-418
v. Easly I-534
v. Hitchcock II-26
v. Huggins I-539, 562, 563, 703
v. Joplin Mining &c. Co. I-575
v. Labor II-363
v. Long II-893, 897, 898
v. Morrison II-26
v. Olmstead III-167
v. Oxford III-177
v. Paul II-588
v. Reed II-481
v. Rodman II-195, III-313
v. Zook I-104
Longely v. Hall III-442
Longhead v. Dikeman Baptist Church II-274
Longuefosse: Succession of I-536
Longwith v. Riggs II-483
Loomis v. Armstrong III-317
Loop v. Northrup I-638
Loosemore v. Smith I-387
Loper: Matter III-361
Lord v. Bourne II-384
v. Lord II-281, 558, 670, 779, 789, III-216
v. Moore II-352
Lore v. Dierkes III-511
Lorieux v. Keller I-244, 420
Lorillard v. Coster I-806. II-341
Loring v. Binney I-797
v. Carnes II-535
v. Coolridge II-823, 824
v. Craft II-873
v. Cunningham III-131, 139
v. Summers I-141
v. Thorndike II-380
v. Woodward II-442, 755
Lorings v. Marsh I-242. II-155, 302, 312
Losey v. Westbrook II-361, 432
Lothrop; Case of I-611
Lothrop: Matter of I-592
Lothrop v. Wightman II-140
Lott v. Kaiser II-898
v. Meacham I-564. II-680
v. Thompson II-384
Lottimer v. Blumenthal II-583
Loudon v. Wilmington &c. R. R. I-387, 675
Lough v. Flaherty III-586
v. Pitman II-102
Loughlin v. Lorenz III-319
Louis v. Triscony II-252
Louisville &c. R. R. v. Burke II-33
Louisville &c. R. R. v. Kellem II-32
Louisville School Board v. Bank of Kentucky II-913
Lounsberg v. Parson II-560
Lovcock v. Clarkson II-670
Love v. Buchanan I-418. II-428
v. Ingram III-568
v. Johnston I-252, 255, 256
Lovell v. Field III-312
v. Nelson II-236
v. Quitman I-196
Loveman v. Taylor I-708
Loveren v. Lamprey I-264
Lovering v. King III-185
v. Lovering II-346, 825, 828
v. Minot II-756
Lovett v. Gillender II-574
v. Lovett II-506, 827
v. Mathews I-675
v. Thomas III-447
Loving v. Ashlin III-183, 655
Low v. Bartlett I-443
v. Harmony II-360, 361, 363
v. Low II-642, 739
Lowder v. Lowder I-24, 45
Lowe v. Barnett II-518
v. Bowman III-479
v. Jones II-245
v. Tarver II-574
Lowell's Appeal II-717
Lowery v. Craig II-73
v. Perry II-851
Lowman v. Aubrey III-580
Lowndes v. Dickerson I-832
Lowry v. Herbert II-875
v. Jackson III-206
v. Lowry III-653
v. Mountjoy II-680
v. Muldrow II-358
v. Newsom II-846
v. Tilleny III-284
Loy v. Kennedy I-120, 126
Loyd v. Loyd III-577
v. Mason I-544
Lucas v. Cannon I-56, 58, 427
v. Donaldson I-649. II-160, 161
v. Hessen II-169
v. Lockhart I-159
v. N. Y. Central R. R. II-399
v. Parsons I-4, 26, 28, 34
v. Price I-564
v. Tucker I-363
Luce v. Durham II-399
v. Harris II-362, 374
v. Manchester & Lawrence R. R. Co. I-429, 436. 484
Lucht v. Behrens III-316
Luckett v. White II-559
Luckey: Matter of II-172
Luco v. Commercial Bank I-336
Lucy v. Lucy II-51. III-183, 420
Ludlam: Estate of II-438, 442
Ludlam v. Otis II-382
Ludlow v. Flournoy I-675
v. Ludlow I-116, 127. III-397, 665
Ludlum v. Otis I-139, 210
Ludwick v. The Commonwealth I-274
Ludwig v. Blackinton II-253
Luffburrow v. Koch II-538
Luffbarry: Estate of II-188
Luigart v. Ripley II-587, 785
Luke v. Marshall II-505
Luken's Appeal III-416
Lumb v. Jenkins I-13
Lumpkin v. Smith II-845
Lumpkins v. Gibbes I-351
Lund v. Lund II-172. III-414
Lunsford v. Jarrett III-569
Lunt v. Lunt II-528, 546
Luper v. Werst I-116, 124
Lupton v. Lupton II-712, 752, 800. III-194, 217, 654
Luques v. Dresden II-572, 828
Luscomb v. Ballard I-364. III-315
Luse v. Rarick III-424
Luster v. Middlecoff I-633
Luther v. Luther I-693
Lutheran Congregation: Appeal of I-213
Lutz v. Atlantic &c. R. R. II-30
v. Gates II-171
Lycan v. Miller I-155
Lyendecker v. Eisemann II-872. III-438
Lyle v. Rodgers III-558
v. Siler I-710
v. Williams II-850
Lyles v. Caldwell I-653
v. Hatton III-415
v. Lyles I-9
Lyman v. Turner I-256
v. Vanderspiegel II-517, 555
Lyme v. Sanford I-483
Lynch v. Clements I-425
v. Divan III-133
v. Kirby III-314
v. Loretta II-269, 288
v. Mahoney II-753
v. Miller I-439, 699
v. Patchen III-203
v. Prendergast I-254
v. Thomas II-680
Lynde v. Cleveland II-482
v. Estabrook II-705
Lyne's Executor v. Crouse I-76
Lyne v. Sanford II-235. III-172, 176
Lynes v. Coley III-135
v. Townsend I-265
Lyon: Estate of II-643, 649, 788, 889
Lyon: Ex parte I-611
Lyon v. Church of Redeemer III-197
v. Gleason I-675, 678
v. Industrial Ass'n II-757
v. Lyon II-140
v. Magagnos II-751, 756
v. Osgood I-636. III-651
v. Petty II-235
v. Smith I-129
v. Vick II-684
Lyons: Ex parte I-573
v. Campbell I-163, 166
v. Mahan I-805. II-537
v. Van Riper I-133
Lytle v. Beveridge I-9
v. Bond II-236

M.

M. Street Baptist Soc. v. Hale II-305
Mabary v. Dollarhide III-358
Mabry v. Stafford II-826, 559
v. Ward II-867, 873
MacAdam v. Logan I-107
McAfee v. McAfee III-352
v. Phillips III-422
McAllister v. Brand II-781
McAllister v. Butterfield I-426. II-302, 322, 323, 427
McAlpine v. Daniel II-101
McAnulty v. McAnulty I-236, 238
v. McClay I-354
Macapes: Estate of III-177
McArthur v. Matthewson I-693
v. Scott I-386, 711. II-518, 519
Macauley's Appeal III-132
McAuley v. Wilson II-313
Macauly: Matter of I-386
McBain v. Winship I-352
McBeth v. Hunt I-529, 531
v. Smith II-113
McBride v. Elmer I-422. II-304, 322
v. McBride I-149, 150
v. Smyth II-545

McBrien v. Martin III-580
McBurney v. Carson III-358
McCabe v. Fowler III-363
v. Lewis I-585, 693
v. Spruil I-800. II-381, 384, 433
McCaffrey: Estate of I-701
McCahan's Appeal III-446
McCall's Appeal II-517, 546
McCall: Estate of II-518. III-416
McCall v. Lee II-240, 251
v. McCurdy I-592
McCallam v. Pleasants III-179
McCalley v. Wilburn III-314
McCampbell v. McCampbell III-196, 215, 219
McCandless: Estate of III-566
McCandlish v. Hopkins I-533
McCann v. Bell II-234
McCants v. Bee II-154
McCartan v. McLaughlin III-179
McCartee v. Camel III-572
v. Orphan Asylum II-285, 320
McCarthy: Matter of I-405, 410
McCarthy v. Chicago &c. R. R. II-29
McCartin v. Traphagen III-658
McCartney v. Calhoun II-139
v. Osburn I-156. II-521
v. Spencer III-582
McCarty v. Cosgrove II-694
v. Denning I-803, 866
v. Fish II-585, 561
v. Frazer II-625. III-132, 183
v. Terry I-803, 806. III-218
McCausland: Estate of III-579
McCaw v. Blewit II-899. III-416
McCay v. Clayton I-674
McChord v. Fisher I-635
McClanahan v. McClanahan II-893
McClauvin v. Thompson I-271
McClead v. Davis II-51. III-182
McClelland: Appeal of I-529, 531, 546
McClelland v. Downey I-636. II-865
v. Filson II-170
McClenahan v. Davis II-680, 682
McClintock's Appeal II-650, 896
McClintock v. Dana II-480
v. Loisseau II-894
McCloskey: Estate of III-443
McCloskey v. Gleason II-588. III-356
McCloud: Estate of I-148
McClung v. McMillan II-344
McClure: Appeal of I-800, 802, 803, 804. II-515. 535
McClure: Estate of II-195
McClure v. McClure I-62
v. Miller II-26
v. Owens II-289
v. People I-687
v. Williams III-179
McClyment: Matter of II-287
McColgan v. Kenny I-332, 701
McCollister v. King III-169
McCollum v. Hinckley II-254
McCombe v. Hudson III-587
McCombs v. Long II-852
McConico v. Cannon II-847
McConnell v. McConnell I-320
McCook v. Harp III-359
McCord v. Fisher I-700
v. McKinley II-874
v. Ochiltree II-300, 306, 316, 321
v. Wright II-227
McCormack v. McCormack II-347. III-201
McCormick v. Ex parte I-278
McCormick v. Sullivant I-679
v. Wright III-374, 395, 396
McCormick Co. v. Gates II-574, 576
McCorn v. McCorn III-193
McCosker v. Brady I-336
McCosker v. Golden I-886. II-855
McCoury v. Leek II-432
McCown v. Sperb I-642. III-396
McCoy: Estate of I-229
McCoy v. Horwitz III-370
v. McCoy I-58, 59, 65
v. Payne I-317. III-470, 471
v. Scott II-51
v. Vulte II-490
McCracken: Estate of III-187
McCrary v. Tasker III-168
McCray v. Lipp I-419
McCrea v. Haraszthy I-385, 386, III-423, 472
McCreary v. Taylor I-703
McCreery v. Allander I-12
McCroan v. Pope II-352, 354
McCue v. Garvey II-170
McCullock v. Campbell I-23, 45, 47, 55, 56, 58, 63
v. Valentine I-73
McCulloh v. Dashiell III-286
McCullough's Appeal II-587
McCullough v. Allen II-779, 788
v. Barr III-444
v. Copeland III-200
v. Gilmore II-575
v. Wise III-182, 472
McCullum v. Chidester III-217
McCully: Estate of I-531
McCully v. Lum III-369, 412
McCune: Estate of II-226, 255, III-221
McCune: Matter of II-253
McCune v. House I-186
McCurdy v. Bowes III-207
v. Neall I 144, 253
McCustain v. Ramey III-137, 570
McCutchen v. Ochmig I-148
McCutcheon v. Weston III-480
McDaniel: Will of I-119
McDaniel v. Douglass II-781
v. Parks III-562
McDaniels v. McDaniels III-362
McDearman v. Martin II-691, 875
McDearmon v. Hodnett II-891, 894
v. Maxfield I-316, 363. III-580
McDearmott v. Iowa Falls &c. R. R. II-82
McDonald: Estate of I-434
McDonald: Matter of II-188, III-370
McDonald v. Barnes III-374
v. Burton III-172
v. Carnes III-421, 422
v. Hutton III-176
v. Jacobs II-139
v. McDonald II-864. III-422
v. Mass. Gen'l Hosp. II-803
v. O'Connell II-160. III-470, 471
v. Walgrove II-575
v. White III-657
McDonnell: Ex parte I-280
McDonnel: Estate of II-890
McDonough: Succession of I-703
McDonough v. Hanifan III-178
v. Loughlin I-138. 403
v. Murdock II-274. 302
McDougald v. Carey I-796
v. Gilchrist II-889
McDowell: Ex parte I-278
McDowell v. Addams II-911
v. Burton II-759
v. Caldwell II-211
v. Hendrix II-50, 51
v. Jones I-573. II-236, 240, 242
v. McDowell II-782
McDuff v. Beauchamp I-794
Mace v. Cushman II-381, 385
McEldery v. McKenzie III-312
McElfresh v. Schley II-773, 779
McElhenny's Appeal III-415
McElmoyle v. Cohen II-212
McElroy v. Hatheway I-627. III-410
v. Thompson III-365, 419
McElwaine: Will of I-104, 107, 114
McElwee v. Ferguson I-21, 51
v. Story III-313
Macey v. Stark I-574, 700, 713
McFadden v. Hefley II-436, 453, III-219
v. Ross I-711. II-181
McFadgen v. Council I-714
McFall v. McFall III-139
v. Sullivan II-645
McFarland: Estate of III-574
v. Baze II-875
v. Creath III-132
v. McKay III-367, 566
v. Stone II-23
McFarlin v. Stimson III-314
McFeely v. Scott I-677, 700. III-480
McGarvey v. Darnall II-251. III-515
McGaughey v. Brown III-660
McGee v. Ford II-849
v. McCants I-4, 9
v. McDonald III-573
v. Porter I-106, 114
v. Wallis III-585
McGehee v. McGehee III-659
McGhee v. Stevens II-789
McGill's Appeal II-501, 541
McGinnis v. Harris II-383
v. McGinnis II-777, 780
McGirr v. Aaron II-306, 323
McGlade's Appeal II-287
McGlaughlin v. McGlaughlin III-215, 216
McGlawn v. Lowe II-680
McGlinsey's Appeal II-75, 170, 171
McGlove v. N. J. R. R. II-32
McGorray: Estate of III-424
McGougan v. Hall III-418
McGowan: Matter of II-750
McGowan v. Lufburrow III-653
v. Zimpleman II-873
McGown v. International &c. R. R. II-33
McGrath v. McGrath II-791
McGraw: Matter of II-288
McGraw v. Davenport II-539
McGregor v. Donelly III-579
v. McGregor I-271, 276. III-512, 657
v. Toomer II-344
McGuigan v. Hall III-421
McGuinness v. Whalen I-576, II-113
McGuire: Will of I-24, 55, 62, 65, II-431
McGuire v. Brown II-384, 786, III-188
v. Evans II-444
v. Kerr I-107
v. Westmoreland II-359
McGunnigle v. McKee II-867
McHardy v. McHardy II-240
Machemer: Estate of I-808, II-872
Machen v. Machen II-377
McHugh: Estate of III-361
McHugh v. Dowd III-573, 578
Macia: Succession of II-517
McIlvaine v. Cox II-273
v. Gether II-586
McIntire: Estate of I-351
McIntire: Matter of II-194
McIntire v. McIntire I-397
v. Worthington I-54, 61, 199, 892
McIntosh: Estate of II-778
McIntosh v. Hambleton II-225
McIntyre v. McIntyre I-156, II-574
v. Morris III-289
v. Zanesville II-302, 315

McKaig v. James III-652
McKaine v. Baskerville II-913
Mackay: Matter of I-124
McKay v. Donald I-643
v. Green II-212. III-216. 653
v. Guirkin II-680
v. Hugus I-418
Mackay v. St. Mary's Church II-153. III-476
McKean v. Vick I-794. III-169
McKee's Appeal II-355
McKee v. Nelson I-408
McKeen v. Frost I-362
v. Oliphant II-252
v. Waldron II-237. III-207
McKeithan v. McGill III-583
McKennan: Appeal of I-625
McKenzie's Appeal II-575
McKenzie v. Anderson III-365
v. Downing I-897
v. Smith II-800
McKeon v. Kearney II-271, 564, 566
Mackey v. Coxe III-134
Mackie v. Alston II-517
McKie v. Clark III-442
Mackie v. Story II-505
McKiernan: Matter of II-249
McKim v. Aulbach III-396
v. Bartlett I-634, 637
v. Blake I-634, 644
v. Doane III-206, 568
v. Harwood I-640
v. Hibbard III-377, 415, 418
McKimm v. Riddle III-475
Mackin: Estate of I-444
McKinder v. Littlejohn III-375, 564
McKinlay v. McGregor II-28
McKinley: Estate of II-251
McKinley v. Lamb I-124
McKinney v. Abbott II-918
v. Alvord I-386
v. Nunn II-846
McKinnon: Estate of I-536
McKinster v. Smith II-575
McKinstry v. Sanders II-538
Macknet v. Macknet II-170, 497, 510, 781, 826
McKnight v. Morgan III-130
v. Read I-272. II-342
v. Walsh II-723. III-370, 376, 417, 443, 445
McKonkey: Appeal of I-157
McKrow v. Painter II-578
McLachlan v. McLachlan II-565, 571
McLain v. School Directors II-323
McLane v. Belvin II-247
v. Johnson III-130, 510
v. Spence II-140
McLaren v. McLellan III-186
v. McMartin III-577
McLaughlin: Will of I-51
McLaughlin v. McDevitt I-23, 66, 69
v. Newton II-267. III-569
v. Winner III-585
McLauren v. Thompson I-708
McLean v. Crow II-213. III-280
v. Freeman II-510
v. McBean III-207
v. McLean I-651
v. Meek III-516
v. Robertson II-669
v. Weeks I-317. III-130, 510
McLellan v. Lunt II-103
McLemore v. Blocker II-461
v. McLemore II-517
McLenahan v. Johnson III-186
McLeod v. Dell II-359
v. Griffis I-356. II-139, 181
v. McDonnell II-779, 785
McLeran v. Benton III-472
McLoskey v. Reid II-506. 692, 720
McLoughlin v. McLoughlin III-195
McLure v. Askew II-800
v. Melton II-211
v. Steele II-892, 899
v. Young II-392
McMahill v. McMahill II-900
McMahon: Estate of II-675
McMahon v. Allen II-113. III-313
v. Harrison I-274, 539
v. Jones II-846
McManany v. Sheridan III-182
McManus v. McDowell III-666
McMarcus: Estate of II-873
McMechen v. McMechen 1-67, 114, 129, 164
McMenamin: Estate of 444, 446
McMichael v. Pye II-513
McMorine v. Storey I-305
McMullen v. Brown II-684. III-219
McMurray v. McMurray III-582
v. Stanley I-155
McNab v. Wixon II-183. III-363
McNabb v. Pond III-139
McNair's Appeal III-367, 396
McNair v. Hawkins II-355
v. Ragland III-395
McNairy v. Bell I-611
McNamara v. Dwyer III-137
MacNamara v. New Melleray III-581
McNaught v. Bostic III-573
McNaughton v. McNaughton I-239, 242
McNeel: Estate of II-184
McNeely v. McNeely II-561
McNeil v. Hammond II-644
v. McNiel III-667
v. Quince III-556
McNeill v. Cook III-561
McNelledge v. Barclay II-395
v. Galbraith II-395
McNichol v. Eaton II-24
McNinch v. Charles I-183
McNulta v. Ensch III-561
McNulty v. Hind III-666
v. Hurd II-249, 250
v. Marcus I-647, 650. III-585
McNutt v. McNutt II-863
Macomb v. Miller II-536
Macomber: Matter of II-268, III-569
Macon &c. R. R. v. Davis II-86
McPherson: Matter of III-1
McPherson v. Clark I-183, 196
v. McPherson II-823
v. Snowden II-390
McPike v. McPike III-183
v. Wells III-167, 280
McQueen: Estate of III-364
McQueen v. McQueen II-777, 778
McRae v. McDonald II-25
v. McRae II-133, 891, 892, 895. III-367
McReary v. Robinson II-873
McRee v. Means I-157
McReynolds v. Jones I-801
McTaggart v. Thompson I-240
McWhorter v. Benson II-196. III-443
McWilliams: Appeal of I-802
McWilliams v. Falcon II-756
v. Hopkins I-632
v. Lea II-227
v. Nisly II-574
v. Norfleet I-625. II-238
McWillie v. Van Vacter III-666
Maddox v. Dent I-800
v. Maddox II-587
v. Negroes II-563
Madison v. Shockley I-319
Madison County Bank v. Suman II-243
Maeck v. Nason II-491
v. Sinclear III-176
Magaw v. Field II-341, 507
Magee: Estate of II-913
Magee v. Burch III-578
v. McNeil I-232
v. O'Neil II-561
Magill v. Brown II-307
v. McMullin II-545
Mager v. Grima III-1
Magner v. Ryan I-309, 316
Magoffin v. Patton II-518, 752
Magraw v. Irwin I-430
v. McGlynn II-251. III-412
Magruder v. Carroll I-246 III-217
v. Peter I-797
Mahaffy v. Mahaffy II-875
Mahan: Matter of I-805. II-850, 535
Mahon v. Bower II-850
Mahone v. Central Bank II-199
Mahr v. O'Hara II-558
Main v. Ryder I-104
v. Schwarzwaelder I-867
Maine Baptist Mission v. Portland II-306
Maine Central Institute v. Haskell II-243. III-562
Mainford's Appeal II-604
Mairs: Matter of III-364
Mairs v. Freeman I-25, 46, 49, 160 214, 217
Major v. Herndon II-707
v. Major II-351, 520
Makepeace v. Moore II-132, 135
Male: Case of I-168, 169, 170, 171
Male v. Williams II-346, 519, 528, III-417
Malin v. Bull III-563
Mallard v. Forscher II-284
Mallet v. Smith II-585
Mallett v. Bamber I-450
Mallon: Estate of I-611
Mallory v. Craige III-204, 653
Malloy v. McNair I-119, 404
Malone v. Hobbs I-189
v. Hundley II-242
v. Majors II-789
Maloney v. Hawkins I-797
v. Wilson III-577
Man v. Warner III-577
Manahan v. Gibbons III-396
Mandelbaum v. McDonnell I-801. II-576
Manderson v. Lukens II-501, 514, 524, 535, 541
Manderville v. Manderville I-275, 624
v. Parker I-116, 450
Mandorf: Matter of I-450
Manice: Matter of III-440
Manice v. Manice I-803. II-782, 792
Manier v. Phelps I-798
Manifold v. Jones III-200
Manlen v. Bailey III-353
Manly v. Turnipseed III-479
Mann v. Evarts II-237. III-175, 207
v. Flynn III-564
v. Hyde II-507, 513, 824, 826
v. Jackson II-588
v. Lawrence II-196. III-443
v. Mann I-417, 421. II-472, 894
v. Mullin II-323
Manners v. Philadelphia Library Co. II-305
Manning v. Craig III-367
v. Leighton I-545. III-313
v. Manning II-890, 899. III-416
v. Osgood III-312
v. Pippen I-178
v. Randolph II-49
v. Thurston II-894
Mansfield: Estate of III-320
Mansion: Succession of III-313, 576
Manson v. Manson III-198

Mantz v. Brown III-316
Manwell v. Briggs II-27
Mapes: Matter of II-822. III-363, 510
Maples v. Milton I-843
March v. Howard II-24
v. Huyter I-175, 354, 355
Marcy v. Marcy I-381. III-515
Marietta Savings Bank v. Jones III-677
Markells v Markells II-823
Market Co. v. Beckley III-567
Markham v. Washburn III-312
Markillie v. Ragland III-190
Markland v. Albes I-702
Markle: Estate of III-441
Markley: Estate of III-194
Marks: Succession of II-911
Marlatt v. Warwick III-580
Marr v. McCullough II-516
v. Marr I-179, 184
v. Peay I-380
v. Rucker III-583
Marre v. Ginocchio II-164
Marriott v. Badger II-778
Marsellis v. Thalhimer II-342
Marsh: Matter of I-457
Marsh v. Brown II-897. III-581
v. Dooley II-245
v. Gilbert II-899
v. Hague II-360, 750, 751
v. Harrington III-397
v. Love III-372
v. Marsh III-187
v. Oliver III-512, 658
v. People I-708, 722. II-161
v. Renton III-419
v. Taylor II-693, 696, 756
v. Tunis III-281
v. Tyrrell I-68
v. Wheeler I-800, 802. II-515, 516, 544, 555, 822
Marshall: Estate of I-20, 45. II-138. III-376, 666
Marshall: Matter of II-343
Marshall v. Berry I-897
v. Blass III-371
v. Bresler I-431
v. Conrad I-13
v. Downing III-437
v. Hitchcock III-667
v. Hudson III-570
v. King II-886
v. Marshall II-900
v. Moore III-356
v. Perkins II-240
v. Rench II-890
v. Rivers II-575
v. Wysong III-436
Marshall County v. Hanna II-136
Marsteller v. Marsteller III-564
Marston v. Judge II-281
v. Lord II-890
v. Marston II-563
v. Norris II-783, 788
Martin's Appeal II-215
Martin: Estate of I-147
Martin v. Baker II-25
v. Ballon II-565, 583
v. Bolton III-510
v. Bradley II-27
v. Campbell III-659
v. Cullen III-172, 201, 218
v. Dry Dock &c. R. R. Co. I-610, 611
v. Ellerbe I-576, 626, 636, 643, 650
v. Fielder III-419
v. Gage I-612
v. Goode III-196, 562
v. Hammond III-476
v. King I-160
v. Kirby II-344
v. Lachasse II-496, 515
v. McChord II-304
v. Martin I-160. II-560, 750, 751. III-512, 579, 657
Martin v. Mitchell I-20, 132
v. Morris I-794
v. Osborne II-444, 460, 759
v. Perkins I-388, 396
v. Rayborn III-419
v. Robinson I-483, 676, 678
v. Sherman I-800, 805
v. Smith II-823. III-133
v. Tally I-636
v. White II-235
v. Wright III-280, 282
Martindale v. Smith I-88
Martinhoff v. Martinhoff I-449
Marvel v. Babbitt II-112
Marvin: Estate of II-195. III-438, 441, 444
Marvin v. Ledwith II-535, 795
v. Marvin I-11
v. Maysville &c. Co. II-30
Marwick v. Andrews II-560
Marx v. McGlynn I-63, 64, 65, 66, 179. II-271, 273, 286
v. Nelms. II-28
Mason's Appeal III-185, 187
Mason: Estate of III-186, 188, 219
Mason: Matter of III-442
Mason v. Atlanta Fire Co. III-472
v. Daly III-179, 506
v. Dunman I-170
v. Holman II-889
v. Man II-211
v. Martin III-419
v. Mason II-785
v. Methodist Epis. Church I-220. II-272, 275, 302, 322, 497, 604
v. Norcross III-479
v. O'Brien II-874
v. Pate II-707
v. Trustees of Methodist Epis. Church of Tuckertown II-478, 506
v. White II-344
v. Williams I-427
Masonic Savings Bank v. Bangs III-221
Mass. &c. Insurance Co. v. Elliott II-246
Massaker v. Massaker I-418
Massey's Appeal II-826
Massey v. Jerauld III-179
v. Modawell I-803. III-371
v. Smith III-177
Massie v. Griffin I-233
v. Hiatt I-245. II-886
v. Jordan II-583
Master v. Bienker I-350
Masters v. Masters III-584
Masterson v. Pullen I-352
Masurie v. Penn. Annuity Co. II-354
Mather v. Mather II-536
Matherson v. Grant III-475
Mathes v. Jackson II-244
v. Smart II-489
Mathews v. Bennett III-414
v. Formiss I-448
v. Mathews II-569, 660. 790, 791
Mathewson v. Arnold III-193, 199
Mathis v. Guffin I-802
v. Mathis II-441. III-416
Matteson v. Matteson III-507
Matthews v. Douthitt I-573, 678
v. Dowling III-284
v. Hoagland II-86, 580, 657
v. Hudson II-706
v. Jones II-243
v. McDade I-141, 152
v. Matthews III-561
v. Turner II-183
Mattison v. Childs III-560
v. Farnham III-318
Mattoon v. Cowing III-378
Maught v. Gelzendanner I-161, II-320
Maund v. McPhail II-427
Mauney v. Holmes II-212
Maupin v. Goodloe II-461
Maurer v. Kerper III-558
Maverick v. Marvel III-582
v. Reynolds I-47
Maxwell: Estate of I-709
Maxwell: Ex parte I-628
Maxwell: Matter of I-325, 331, 611. III-963
Maxwell v. Briggs II-86
v. Craft II-865
v. Featherston II-500
v. McClintock II-545
v. Maxwell I-233. II-893
v. Smith II-799. III-173, 174, 506, 583
May's Appeal II-510
May: Matter of III-510, 564, 565
May v. Burk I-430
v. Coleman III-571
v. Green III-414, 438, 444
v. Jones II-855
v. Kelly I-637, 647, 653. III-372
v. May I-420. II-644, 865
v. Parham II-234, 244. III-185
v. Skinner III-441
v. Vann II-231
Mayall's Appeal II-563
Mayberry's Appeal III-438
Maybin v. Knighton I-351, 676
Maybury v. Grady II-440. III-185, 187, 195, 219
Mayer v. Houston I-611, 701
v. McCune III-168
v. Soc. for Visitation II-303
Mayes v. Jones III-208
Maynard v. May III-567
v. Vinton I-56, 63, 65, 131
v. Woodward II-275, 305
Mayo v. Bentle II-216
v. Bland II-436, 437, 453
v. Clancy III-423
v. Jones I-22
v. Tudor II-789
Mays v. Rogers II-251. III-169, 175
Mead v Byington II-132. III-419
v. Jenkins II-168, 176, 180, 185, III-564, 565
v. Jennings II-824
v. Kilday III-586
Meader v. Archor II-913
Meador v. Meador III-218
v. Sorsby I-5
Meadows v. Barry I-422
v. Meadows II-836
Meakin: Estate of III-175
Meakin v. Duvall II-559, III-192, 199
Meakings v. Cromwell I-797, 800, 802
Mealey: Estate of I-120, 129, 133
Means v. Evans I-285
v. Harrison III-356
v. Means I-9
v. Moore I-174, 183, 184, 202
Meares v. Meares II-545
Mears v. Sinclair II-925
Meason: Ex parte II-215, 268
Mebane v. Womack II-506, 510
Mechanic's Savings Bank v. Waite II-848
Meckell's Appeal III-424
Mecker v. Swift II-227
Medomak Bank v. Curtis III-563
Meech v. Meech II-793
v. Weston II-867
Meehan v. Rourke I-134
Meek: Appeal of I-224
Meek v. Perry I-67
Meeker v. Felts II-739
v. Meeker I-21, 24, 48. II-605, 898
v. Straat III-369

Meeker v. Vanderveer III-361
Meeks v. Kirby III-472
v. Vassault I-641. III-472
Megeman v. Bell III-582
Meikle: Matter of II-197. III-363
Meinzer v. Bevington III-510
Meisenhelter: Will of I-168, 169
Melick v. Melick III-658
Melizet's Appeal II-792
Mellanefy v. Morrison I-53. 415
Mellen v. Baldwin II-27. III-287
v. Banning III-652
v. Mellen II-776
Mellon's Appeal III-7
Mellon: Estate of II-706
Mellon v. Reed I-801, 804
Melms v. Pfister II-822
Melone v. Davis III-376, 559
Melson v. Cooper II-575
Melvin v. Bullard II-896
Melzet's Appeal II-864
Mendenhall: Appeal of I-221
Mendenhall v. Benbow I-793, III-286
Mendorf: Matter of I-62
Mengel's Appeal II-896
Mercantile Trust Co. v. Brown II-540
Mercer: Succession of I-240
Mercer v. Hogan II-267
v. Kelso I-410
v. Mackin I-208, 456. II-281
v. Newson II-140
v. Pike I-575
Merchant: Case of I-832, III-131
Merchant: Will of I-106, 120, 625, 709
Merchant v. Merchant I-897
Merchant's Bank v. Ward II-241
Mercier v. Smith III-478
Mericlo: Matter of II-913
Meriden Steam &c. Co. v. Guy II-245
Merkel's Appeal II-649, 697
Merkel: Estate of III-182, 569
Merket v. Smith III-369
Merkle v. Bennington II-28, 34
Merriam v. Simonds II-340, 341
v. Wolcott II-588
Merrick: Estate of III-130, 416
Merrifield v. Longmire III-416, 417
Merrill v. Bickford III-191
v. Emery II-565, 571, 789
v. Harris I-676. III-172
v. Merrill I-574
v. Morrissett I-445, 446
v. New England Insurance Co. I-484. III-134, 135, 476
v. Rhodes II-897
v. Rolston I-34, 41, 42, 56, 57, 63, 65, 66, 251
v. Wisconsin Female College II-570
v. Woodbury II-102
Merriman v. Lacefield II-893
Merritt v. Buckman III-192, 199
v. Cotton States Life Ins. Co. III-480
v. Dickey I-794
v. Keeler III-480
v. Lambert II-27. III-287
v. Merritt II-663. III-174, 193, 316
v. Richardson II-709, 757
v. Seaman II-85. III-477
Merryman v. Long III-139, 219, 221, 413
v. Merryman II-352, 363
Mersells v. Mersells III-656
Mertins v. Loewenberg III-475
Meserole: Matter of III-441
Meserve v. Meserve I-264
Mesick v. Mesick III-395
Metamara v. Metamara I-430, 432, 436
Metcalf v. Clark I-311. III-515
v. Framingham Parish II-442
v. Grover III-570
Metcalfe v. Colles II-898. III-438, 439, 440
Meth. Episc. Ch. v. Remington II-271, 300, 305, 313
Metropolitan Elevated R. R. v. Manhattan Railway II-140
Metteer v. Wiley II-788
Metz's Appeal II-171
Meurer: Will of I-123, 128, 131, 144
Meyer: Estate of III-444, 445
Meyer: Matter of II-537
Meyer v. Eisler II-344, 517
v. Fogg I-119
Meyeringh v. Wendt III-360
Meyers v. Mutual Life Ins. Co. II-132
Michael v. Baker I-76
Micheau v. Caldwell III-584
Michenor: Estate of II-535
Michenor v. Dale I-896
Michigan Bank v. Hastings II-565, 583
Michoud v. Girod II-139, 140
Mick v. Mick II-273
Mickle v. Brown III-360
v. Matlock I-120, 125
Middlebrook v. Pendleton III-562
Middleditch v. Williams I-397, 425
Middleton's Appeal II-829
Middleton: Estate of II-481
Middleton: Matter of I-710
Middleton: Will of I-386, 389, 677
Middleton v. Middleton II-53
v. Rice II-588
v. Steward I-73
Mighton v. Dawson I-626, 640, 649
Milburn v. Milburn I-245, 888
Miles: Will of I-95, 111
Miles v. Boyden II-717. III-558
v. Peabody II-193, 197. III-509
v. Strong III-507, 508
v. Wister II-724
Milhous v. Dunham II-700
Mill: Appeal of I-42
Millard's Appeal II-478, 479
Millard: Matter of III-356
Millard v. Clark II-443
v. Harris I-543. II-248, 249, III-373
Millenovich: Estate of II-169, 170, 198
Millenovich: Matter of II-181
Miller: Appeal of I-803, 804. II-212, 389, 649, 887, 893, 894, 895, 899, 912. III-394, 419
Miller: Estate of II-255, 825, 926, III-280, 439, 563
Miller: Matter of II-22, 169, 865, III-4, 135
Miller: Will of II-535, 540
Miller v. Atkinson II-319
v. Beverley III-416
v. Chittenden II-305, 313, 323
v. Commonwealth I-804. III-3, 6
v. Congdon II-755. III-378, 415, 443
v. Cooch III-188, 193
v. Cook III-377
v. Cotton II-777
v. Davis III-581
v. Dayton II-32
v. Defoor II-869
v. Dorsey III 574
v. Goodwin III-284
v. Harrison II-216, 244, 254
v. Helm II-159
Miller v. Henderson I-818, III-480
v. Hoberg III-472
v. Holt I-152
v. Hulme II-851
v. Irby II-137, 286. III-169
v. Jones I-484
v. Keegan II-515
v. Leeds III-515
v. Lerch II-285
v. McDonald II-868
v. McNeil I-97, 126
v. Major III-424
v. Meetch I-326, 331. II-155
v. Miller I-56, 710. II-25, 236, 874, 888. III-365
v. Montgomery III-581
v. Philip II-709
v. Phillips I-236, 237
v. Plumb I-867
v. Porter II-300, 304, 305
v. Proctor III-369
v. Rice III-506
v. Sanford II-754. III-198
v. Schumaker I-117
v. Springer I-417, 419
v. Stark II-653
v. Steele III-424
v. Stepper II-873
v. Teachout II-307, 316
v. Towles III-419, 420, 584
v. Unbehower II-28
v. White I-23, 199
v. Wilkins III-287
v. Williamson II-700, 706. III-377
v. Wilson II-26. III-287
Millett v. Millett II-242
Milligan's Appeal III-446
Milliken: Estate of I-349
Milliken v. Welliver II-778, 790
Milliman v. Holmes II-384, 385
Mills: Matter of II-246
Mills v. Carter I-702
v. Davis III-581
v. Harris I-804
v. Herndon I-483
v. Hoffman III-370
v. Jones II-213
v. Mead III-203
v. Mills I-704. II-139, 751, 787, III-368
v. Newberry I-158. II-325, 564, 566
v. Smith III-369, 377
v. Talley III-356
Millsap v. Stanley III-654, 659
Milne's Appeal II-849
Milne v. Milne II-303, 321
Milner v. Atherton II-642
Milnor v. Milnor II-212
Miltenberger v. Commonwealth I-651
v. Schlegel III-191, 202
Milton v. Hunter I-22, 66, 427
Miner v. Austin II-250
v. Aylesworth III-659
v. Smith III-655
Minkler v. Minkler I-207
Minnig v. Batdorf II-344, 524, 536
Minor v. Dabney II-465
v. Mead II-182
v. Minor III-478
v. Thomas I-45
Minot v. Amory II-756
v. Baker II-315, 318
v. Boston Asylum I-424. II-322
v. Harris II-385
v. Norcross II-161. III-377
v. Prescott II-563
v. Taylor II-540
v. Thompson II-700
Minter's Appeal II-513
Minton v. Eldridge III-221
Minturn: Matter of II-633

Minuse v. Cox I-5. III-414
Misenheimer v. Sifford III-198
Miskimin's Appeal III-167
Missionary Soc. v. Calvert II-270, 316
v. Chapman II-314, 323
Missouri Pacific R. R. v. Lewis II-29
Mitcham v. Moore II-29, 872
Mitchel v. Adams I-326
v. Tishomingo Savings Institution III-378
Mitchell v. Blain II-670
v. Hecker I-633
v. Holder I-76
v. Kirk I-302
v. Knapp II-584
v. Lea II-243
v. Lunt I-312, 319
v. Mitchell I-63, 66, 128, 651, II-892, 895, 897. III-203, 215, 217, 220
v. Presbyt. Church II-317
v. Rice I-336, 362, 364, 368
v. Rucker III-476, 478
v. Spence I-565
v. Thompson III-133
v. Trotter III-360
v. Walker I-418
v. Word II-866
Mix: Appeal of III-665
Moale v. Cutting II-899. III-372
Mobberly v. Johnson I-561, 676
Mobley v. Andrews II-52
v. Cummings II-578
v. Dunlap II-866
v. Mobley II-864
Mock v. Pleasants I-356. III-657
Modawell v. Hudson I-635, 638
Moderno: Estate of II-225
Moderno: Matter of II-289
Moehring v. Mitchell II-497
Moffatt v. Laughridge II-135. III-354, 439
Moffet: Estate of III-280
Moffett v. Moffett I-188, 169
Moffitt v. Moffitt III-176
Moke v. Norrie II-431
Mollan v. Griffith II-661, 800, III-189, 221
Molloy: Estate of I-611
Molton v. Mumford III-287
Monarque v. Monarque II-346
Moncrief v. Moncrief III-171
v. Ross I-800, 803, 804
Mondorf: Matter of I-58
Monestier: Estate of II-643
Mong v. Roush II-272
Monroe v. Barclay I-65, 69
v. Douglas II-354
v. James I-364, 367, 368, 369
v. Jones I-806
v. VanMeter I-73
Montague v. Allen I-47, 48, 67, 412, 414, 415
v. Smith III-284
v. Thomason III-580
Montalvan v. Clover III-137
Montfort v. Montfort I-624, II-707
Montgomery's Appeal II-800, 851
Montgomery: Estate of II-868, III-168, 185
Montgomery v. Armstrong III-561
v. Bruere II-132
v. Cloud III 659
v. Coldwell III-363
v. Dorion I-13
v. Dunning II-183, 184
v. Foster I-397
v. Robertson II-760
v. Simpson III-580
Moody v. Ewing III-562
v. Hempfield II-197, 534
v. Hemphill III-376
v. Moody I-529, 539
Moody v. Shaw III-179, 314
v. Smoot I-795
Mooers v. White I-13, 253, 266, III-168
Moon v. Stone II-353, 354, 360
Mooney v. Evans II-471
v. Olsen I-58, 63, 65, 66, 424, 425, 427
Moore's Appeal III-195, 199
Moore: Estate of I-592, 702, 704, 712. II-850, 875. III-353, 356, 357, 369, 412, 421, 444
Moore: Ex Parte II-789
Moore: Matter of I-611. II-195, 197. III-442, 447
Moore v. American Loan etc. Co. III-365, 651
v. Batchelder II-251. III-557
v. Beauchamp II-710. III-355, 376, 417
v. Beckwith III-193
v. Boston II-24
v. Brown II-250
v. Byers II-211
v. Dimond II-344
v. Dunn III-186
v. Earl I-651
v. Ellsworth III-169
v. Eure III-363
v. Finch III-476
v. Gordon II-865
v. Green I-673
v. Hamilton III-365
v. Harper II-586
v. Hilton II-643
v. Holmes II-184
v. Ingram III-179
v. James I-336
v. Jordan I-429. III-135
v. Kerr III-586
v. Leach II-352, 354
v. Lesueur II-850
v. Littel II-350
v. Lyons II-514, 537
v. McDonald I-65
v. Moore I-18, 47, 125, 409, 529, 545. II-285, 300, 302, 315, 437, 661, 866, 867, 868. III-364
v. Phillbrick I-677
v. Raggi III-424
v. Randolph III-439
v. Rogers II-251
v. Sanders II-575
v. Schofield III-579
v. Shields III-208
v. Smith I-687, 699. II-520, III-283
v. Spier I-67, 68, 116, 129, 239, 243, 409
v. State I-630
v. Steidell II-864
v. Tandy III-394
v. Ware III-175
v. Weaver II-344, 911
v. Wicks II-347
v. Willett III-473
v. Winston II-245
Moores v. Moores I-799
Moran v. Dilleham II-354
v. Hollings II-29
Mordecai v. Boylan I-418. II-360
v. Schirmer I-714
More v. Bennett III-287
Morehouse v. Cotheal I-125
v. Ware II-161
Moreland v. Lawrence I-676
Morell v. Dickey II-718
Morey v. Sohier I-239, 712. II-636
Morgan: Estate of I-535, 562, II-215
Morgan: Matter of II-894
Morgan v. Casey III-472
v. Creditors III-286
v. Davenport I-179
v. Dodge I-329, 628, 706
v. Hamlet III-576
v. Hannas III-439
Morgan v. Huggins II-491
v. Morgan II-236, 481. III-369, 418, 419, 446, 513, 569
v. Nelson III-443
v. Peoope II-66[illegible]
v. Perry II-888
v. Pettit II-352
v. Pope II-480
v. Rotch III-654
v. Stevens I-168, 169, 170
v. Titus II-735
v. Valentine II-751
Moring v. Flanders II-212
Moritz v. Brough I-179
Morony: Estate of III-185
Morrell: Estate of III-132
Morrell v. Foster II-184
Morrill v. Coble III-176
v. Morrill I-319. II-53. III-134
Morris: Estate of III-412, 423
Morris: Matter of II-867
Morris v. Cain III 575
v. Chicago &c. R. R. Co. I-488, 627. II-29
v. Garland II-443, 793
v. Grubb III-581
v. Henderson II-465
v. Jameson II-497
v. Kent II-595
v. Lapham II-694
v. Morris I-351, 634. II-510, 643, 794, 850, 872. III-359, 360, 659
v. Mowatt III-220
v. Murphy III-666
v. Owen II-361
v. Sessions II-381
v. Sickly III-193
v. Syme I-652. II-160
Morris Canal &c. Co. v. Van Vorst I-652
Morrison: Estate of II-373
Morrison v. Beirer II-304
v. Bowman II-773
v. Garrett II-139
v. Jewell III-477
v. Kramer II-243
v. Lavelle I-652. III 375
v. Morrison II-347
v. Smith I-26, 28, 305
Morrow: Appeal of I-232
Morrow v. Brenizer I-800, 805
v. Cloud I-302
v. Morrow II-782. III-283, 318
v. Peyton I-630
v. Scott II-912
Morse v. Clayton II-112, 159
v. Crawford I-408
v. Hackensack Savings Bk. III-204
v. Hayden II-506, 571
v. Mason II-340, 507
v. Morse I-245
v. Scott I-42
v. Smith I-867
v. Stearns II-427
Mortimer v. Met. Elevated Rwy. Co. II-53
Morton v. Barrett I-798
v. Ingram I-118, 408
v. Morton II-360, 518, 539, 546
v. Murrell II-438, 441, 651
v. Onion I-90, 237
v. Perry II-472
Mortrie v. Hunt I-592
Moseley: Estate of II-439
Moseley v. Henry III-579
v. Mastin I-573
Mosely v. Burrow I-429
v. Carr I-394, 456
v. Floyd II-140. III-393
v. McGough II-849
Moses v. Allen II-513
v. Julian I-359
v. Moses III-316
v. Murgitroyd III-139
Mosher v. Yost I-613
Mosier v. Zimmerman III-584

Mosley v. Taylor III-315
Mosman v. Bender III-361
Moss' Appeal III-413
Moss v. Foulkes II-651
v. Helsley II-775, 827. III-216
Mott v. Ackerman I-565. II-162
Moulton v. Holmes III-361
Mount's Appeal II-483
Mount: Matter of II-171. III-438, 439, 445, 446
Mount v. Mitchell II-213
v. Slack III-441
v. VanNess III-186, 370
Mosseau: Will of I-385
Mousseau v. Mousseau III-284
Mowatt v. Carow II-341. 360, 510, 537
Mower's Appeal III-437, 444
Mowry v. Adams III-474
v. Letham I-538
v. Peck II-226
v. Peet III-563
v. Lilber I-60
v. Robinson III-179
v. Smith II-898
Mowser v. Mowser II-876
Moye v. Albritton II-216. III-374
v. May II-926
v. Petivay III-365
Moyer: Estate of II-753
Moyer v. Swygart I-413. II-194
v. Weil I-443
Mudge v. Parker III-413
Muh: Succession of I-162
Muir: Matter of II-343
Muir v. Miller I-66, 424
Muirhead v. Muirhead I-531
Mulcahey v. Bank I-794
Muldoon v. Crawford I-643. II-214
v. Muldoon III-178
Mulford v. Mulford II-112, 183, 696, 873. III-130, 188
Mull v. Mull II-510, 541
Mullen v. Helderman I-65, 428
v. Mullen II-184
Muller: Matter of II-693, 720
Muller v. St. Louis Hospital Ass'n I-57, 66
Mulligan v. Leonard I-168, 170
Mullin: Estate of I-634
Mullins v. Cotrell I-23
v. Lyles I-76
v. Yarborough III-187
Mullock v. Souder I-265
Mulloy v. Kyle II-132
Mulvey v. Johnson II-240
Mumford: Estate of II-793
Mumford v. Hall I-633
v. Overseers I-653
v. Rochester II-528, 708
Munday v. Taylor I-31
Munden v. Bailey II-195, 850
Mundorff v. Wangler I-632, 638
Munds v. Cassidy II-871
Mundy: Appeal of I-68
Mundy v. Mundy I-97, 126, 129, 134, 184, 189
Munford v. Hall I 676
Munger v. Perkins III-510
Muncipal Court v. Henry III-376
Munn: Estate of III-443
Munn v. Owens I-278, 282
Munnikhuysen v. Magraw I-592, 712
Munroe v. Holmes I-576. II-114
v. People I-573, 707, 711
Munsey v. Webster I-532, 702
Murchinson v. Whitted III-179
Murdock's Appeal III-215, 216
Murdock v. Hunt I-582
v. Ratcliff I-817
v. Ward II-399. 865
Murff v. Frazier II-847
Murgitroyd v. Cleary II-799. 845
Murphee v. Singleton II-685
Murphy: Estate of I-562
Murphy v. Black I-141, 150, 175, 177
v. Creighton I-436, 484, 677
v. Dullam II-321
v. Hall I-430
v. Marcellus II-438, 755
v. Menard I-574, II-159
v. Murphy I-119, 403, 545, 563
v. Nathans II-892, 900
v. N. Y. &c. R. R. II-33, 100
v. Vaughan II-868
Murray: Estate of I-484
Murray v. Barbee I-71
v. Blatchford II-153. III-361
v. Bronson II-390
v. Cannon I-897
v. Luna I-639
v. Murphy I-137
v. Norwood I-430
v. Oliver I-255
v. Ridley II-199, 210
Murrell v. McAllister III-566
Murrill v. Sandlin I-698, 712
Muscogee Lumber Co. v. Hyer III-437
Musgrave: Matter of I-682
Musick v. Beebe I-637
Musselman: Appeal of I-429
Musselman: Estate of II-645
Musser v. Curry I-252, 255
v. Oliver II-851
Mutual Aid Soc. v. Miller III-132
Mutual Association v. Montgomery III-132
Mutual Benefit Insurance Co. v. Tisdale I-674. 677
Mutual Insurance Co. v. Hawell II-240
Mutual Life Ins. Co. v. Hopper III-207
v. Shipman II-588
v. Sturges II-152
Myatt v. Myatt I-702, 709
Myer: Appeal of I-797. III-447
Myer: Estate of I-139
Myer v. Cole III-562
Myers: Estate of II-364
Myers: Matter of III-365, 395, 396
Myers v. Adler II-534
v. Davies I-278, 282
v. Eddy I-268, 419. III-194
v. Myers II-342. III-416, 419, 422
v. Reinstein III-579
v. Vanderbilt I-159
Myles v. Boyden II-717
Myrick: Succession of III-372
Myrick v. Hutchinson III-135

N.

Naffie: Estate of I-45
Nagle: Appeal of I-800, 803, 804
Nagle v. Ball II-236, 246
Nahmeris v. Copely II-754
Nailor v. Nailor II-892, 897
Nally v. McDonald III-567
Nancy v. Snell II-683
Nan Mickel: Matter of I-242
Nanny v. Allen II-869
Nanz v. Oakley I-629, 630, 636, 648, 653. III-396, 397
Napier v. Napier III-371
Nash v. Cutler II-584
v. Heilman III-358
v. Hogan III-505
v. Nash II-539
v. Smallurred III-215
v. Taylor III-193, 196, 200
v. Young II-873
Nashville &c. R. R. v. Prince II-33
Nason v. Smalley II-154
Nass v. Vanswearingen I-298, 319
Nathan v. Lehman I-675. II-196
National Bank of Troy v. Stanton I-626, 705, 721. II-113. III-561, 564, 565
National Bank of West Troy v. Levy III-511
Nations v. Hawkins II-28. III-287
Naundorf v. Schumann I-564, II-162, 535
Neal: Estate of I-713. III-653
Neal v. Baker I-318
v. Charlton I-574
v. Patten II-133
Neale v. Hagthorp II-160
Neare v. Jenkins II-363
Nearpass v. Gilman III-581
Nease v. Capeheart I-318
Neaves v. Neaves II-352
Neder v. Zimmer II-752
Needham v. Grand Trunk R. R. II-30
v. Ide I-407
Needles v. Martin II-317
v. Needles II-889
Neeley v. Grantham I-804
Neff's Appeal II-360
Negley v. Gard I-6. III-376, 394, 559
Negroes Chase v. Plummer I-157
Negus v. Negus I-245
Neighbors v. Hamlin I-625, 704
Neiheisel v. Toerge I-57, 60, 64, 146, 179
Neil: Estate of II-428
Neil v. Case II-247
v. Newbern II-132
Neilley v. Neilley II-267
Neilson v. Bishop II 528
Neistrath: Estate of II-433, 661
Nelson: Estate of III-447
Nelson: Matter of I-66
Nelson v. Blue II-381
v. Boynton I-354, 543
v. Bush II-891, 897
v. Chesapeake &c. R. R. II-29
v. Corwin I-641
v. Cornwell II-799. III-362
v. Cromwell III-572
v. Hall III-365
v. Iverson II-342
v. Kownslar II-782, 788
v. McDonald III-507
v. McGiffert I-214
v. Moore II-506
v. Murfree II-850
v. Nelson II-896, 897, 899
v. Page III-354
v. Potter I-679, 680
v. Smith II-674
v. Stollenwerck II-132
v. Whitfield I-467
v. Wilson II-873
v. Wyan II-899
Neo v. Neo II-405
Nerpel's Appeal II-875
Nesmith: Matter of I-631
Nesmith v. Dinsmore II-892
Ness v. Wood III-312

Nettles v. McCown III-364, 367
Nettleton v. Dinehart II-26
v. Nettleton II-889
Nettman v. Schramm III-395
Neugent v. Neugent I-129
Nevin's Appeal II-871
Nevins v. Gourley II-578, 583
v. Martin I-417
New v. Bonaker II-325
v. New II-894
v. Nichols I-468
v. Nicol III-317
Newall's Appeal II-322
Newark v. Stockton II-315
Newark Savings Institution v. Jones III-515
Newberry v. Hinman II-528
Newbold v. Fenimore II-232, 233, 243. III-474
v. Prickett II-472, 513
Newby v. Skinner I-805
Newcomb v. Goss II-253. III-583
v. Stibbins III-182
v. St. Peters II-304
v. Williams I-650, 707. III-378
v. Wing III-353
Newcomer v. Wallace III-217
New Ebenezer Ass'n v. Green Lumber Co. III-581
Newell: Appeal of I-422. II-427
Newell v. Homer I-208
v. Montgomery III-173
v. Nichols II-497, 538, 547, 561
v. Peaslee III-136
v. Toles II-825
v. West II-253. III-376
New England etc. Bank v. Newport Factory III-370
New England Mutual Life Insurance Co. v. Woodworth I-530, 676
New England Trust Co. v. Eaton III-413
Newhall v. Turney II-112. III-475, 477
New Haven Inst. v. New Haven II-274, 314
Newhouse v. Gale I-703, 708
v. Godwin I-124, 163, 166
New Jersey Ins. Co. v. Meeker III-206
Newkirk v. Newkirk II-574
v. Hawes II-349, 382
v. Tracey III-510
Newlin v. Freeman I-73, 76, 78
v. White II-432
Newman: Estate of II-887
Newman: Matter of II-759
Newman v. Jenkins I-678
v. Warner I-698, 705
v. Wilbourne II-889
v. Winlock II-871
Newmarket v. Smart II-306
Newport v. Cook II-517
Newsom v. Carlton III-179
Newsom v. Thornton III-196, 665
Newson v. Clarke II-323
v. Jackson II-27
v. Starke II-302, 315
Newton: Will of I-127
Newton v. Cocke I-332
v. Cox I-633
v. Newton I-545. III-396, 580
v. Seaman's Friend Soc. I-141, 468, 471
New York Conference v. Clarkson II-322
New York Schools: Matter of II-304
Nicholas v. Adams I-897
v. Kershner I-11, 24, 25, 46
v. Nicholas II-791
Nichols: Matter of I-457
Nichols v. Allen II-819
v. Binns I-27
v. Chandler I-152
v. Denny II-344
v. Eaton II-574
v. Oliver I-795
v. Shepard II-912
Nicholson: Estate of III-411
Nickelson v. Ingram I-539
Nickerson: Matter of III-667
Nickerson v. Bowly II-792, 839, 865
v. Buck I-108, 129
v. Chase II-621
v. Harriman II-33
Nicoll v. Erie R'way II-562, 564
v. Scott I-566. II-537
Nicrosi v. Ginley I-674, 676
v. Greeley I-484
Nieman's Estate III-7
Nightingale v. Burrell II-354
Nimmo v. Commonwealth II-216
v. Stewart II-353, 354
Nimmons v. Westfall II-790
Nix v. Bradley I-886
Nixon v. Armstrong I-118, 119
v. Robbins II-520
Noah: Estate of II-869
Noble: Estate of I-117
Noble v. Burnett I-119, 403
v. Morrey II-215, 234. III-219
Nock v. Nock I-130
Nodine v. Greenfield II-344. 536
Noe v. Kern I-157
v. Miller II-352
v. Spilvallo II-773
Noel v. Garnett II-789
v. Harvey II-195
v. Noel II-604
Nolan v. Bolton I-420
v. Manton III-471
Nolasco v Lurty II-918
Nolting: Matter of I-378, 546
Noon v. Finnegan II-24. III-473
Norcross v. Murphy II-318, 324
Norfleet v. Riddick I-305
Norman: Will of I-411
Norman v. Olney III-172, 177
v. Walker I-648
Normand v. Grognard I-288, 443, 483. II-927. III-127
Norres v. Hays III-474
Norris' Appeal III-364
v. Beyea II-510
v. Clark II-779, 785
v. Collins III-581
v. Farrell III-189, 666
v. Norris I-675
v. State I-410
v. Thompson III-300, 311
v. Towle III-133
North v. Lowe II-247
v. Priest III-375, 422, 563
v. Probate Judge II-873
v. Valk I-800, 806
v. Walker II-247. III-362
North Adams v. Fitch II-307, 316, 322
Northampton v. Smith I-350
Northampton County Savings Bank: Matter of I-646
North Carolina University v. Gatling II-323
Northcraft v. Oliver III-472
Northcut v. Wilkinson II-154
Northcutt v. Northcutt I-104, 114
Northrup v. Phillips I-794
North Shore Ferry Co: Matter of I-796
Northwestern Conference v. Meyers III-205
Norton: Appeal of I-712
Norton v. Norton III-173, 174
v. Palmer III-137, 515
v. Reily I-53
v. Sewall II-31
Norvell v. Lessueur I-675
Norwood v. Harness III-285, 353
Notter's Appeal II-875
Nourse v. Merriam II-574
Nowling v. Nowling I-24
Noyes: Matter of II-750
Noyes: Will of I-179, 214
Noyes v. Pritchard II-830
v. Southworth I-227
v. Turnbull III-318
Nudd v. Powers III-198, 202
Nugent: Matter of I-543
Nugent v. Laduke II-137
Nunan: Estate of I-535
Nunn v. Nunn III-365
Nunnally v. Becker III-560
Nusz v. Grove I-531, 540
Nutall v. Brannin II-241, 243
Nutt v. Norton I-238
Nutter v. Vickery II-512, 662, 824. III-373
Nutting v. Goodridge II-25
Nyce: Estate of III-370
Nyce v. Nyce II-830

O.

Oakes v. Buckley I-573, 574, 575. II-244
Oates v. Lilly III-577
Oberle v. Lerch I-806
Obert v. Obert II-139
O'Brien: Estate of I-531, 540. III-281
O'Brien: Matter of III-138, 353, 411
O'Brien v. Gallagher I-97, 126
v. Heeney II-502
v. Weller III-582
O'Bryne v. Feeley I-17
v. O'Bryne II-515, 517, 710
Ochiltree v. Wright III-394, 396
Ochoa v. Muller I-354, 673
Ockershausen: Matter of III-138
Ockershausen v. Ockershausen III-586
O'Connell v. O'Connell II-900
O'Conner v. Gifford III-360, 376
v. Huggins I-677
v. O'Conner III-187
v. Ward III-651
O'Connor: Matter of III-411
O'Connor v. Gifford II-817
Odell: Matter of I-701. II-198, 692. III-280
Odell v. Howell I-640
v. Odell II-285, 308
v. Rogers I-385. II-139
Odenwalder v. Schorr I-205
Odiorne: Appeal of I-531. II-675
O'Donnell v. Herman II-262
O'Driscoll v. Fishburne I-298
v. Köger II-541, 547, 776
O'Dwyer v. Geare I-80
Oerth: Matter of II-765
Officer v. Board of Home Missions I-797
Offutt v. Offutt I-170
v. Scott I-798

Ogden v. Greenleaf I-54, 64, 66, 354
v. Pallee II-755
Ogilsbie: Matter of II-534
Ogilvie v. Ogilvie III-416
Ogle v. Tayloe III-197, 572
Oglesby v. Gilmore II-112
v. Howard I-704. III-358
O'Gorman v. Lindeke I-650
Ogsbury v. Ogsbury I-803
O'Hagan: Will of I-116
O'Haleran v. O'Haleran III-177
O'Hara v. Dudley II-320
O'Harrow v. Whitney II-588, 781
OhChow v. Brockway I-354, 483
Ohlendorf v. Kanne III-437
Ohm v. Superior Court III-510, 660
O'Howell v. Kirk I-363
Old: Estate of III-442
Oliva v. Bunaforza I-625
Oliver's Appeal III-205
Oliver v. Ellis I-798
v. Platt III-371
v. Vance II-911
v. Wiley III-659
Olliffe v. Wells II-320
Olmstead v. Dunn II-345, 536, 541
v. Harvey I-9
Olmsted: Matter of III-178
Olmsted v. Clark I-816
v. Keyes II-855
Olney v. Hull II-514, 538
Olsen v. Rich I-722
Olson: Will of I-446
Olun: Estate of I-712
Olwine: Appeal of I-565
Onderdonk v. Onderdonk II-827
O'Neal v. Farr I-206
O'Neale v. Ward II-588
O'Neil's Appeal II-845. III-376
O'Neil: Matter of I-95, 109, 530
O'Neil: Will of I-107
O'Neil v. Cleveland II-154. III-365
v. Freeman III-575
v. Tinsdale I-628, 705
O'Neill v O'Donnell III-443
v. O'Neill III-282
Onondaga Trust Co. v. Price II-684
Opie v. Castleman III-368
Oram v. Rothermel I-793. III-579
Orcutt's Appeal III-3
Orcutt v. Orms II-135. III-584
Ordinary v. Barcalow I-641, 642
v. Condy I-653
v. Cooley I-633, 635
v. Crosby I-642
v. Hart I-641, 647
v. Kershaw I-636. III-422
v. Lippincott I-638
v. McClure I-647
v. Poulson I-646
v. Smith I-633, 642, 648
v. Snook I-651
v. Updike I-633
v. White I-642. II-799, 851
Ordish v. McDermott I-179
Ordronaux v. Helie II-927. III-136
Ordway v. Dow II-518
O'Reilly v. Nicholson II-783
Oriol v. Herndon I-796
Ormiston v. Olcott III-360, 394
Orndorff v. Hummer I-119, 403
Orne v. Ritchie III-314
Orphan Asylum v. White II-287, 289
Orr v. Cox III-580
v. Moses II-663
v. Orr III-357
Orrick v. Boehm II-602, 604, 788, 827
v. Robbins II-864
Orser: Matter of II-281
Orser v. Orser I-147. III-421
Orthwein v. Thomas II-888
Ortiz: Matter of III-136
Orton v. Orton II 670. III-216
Osborn: Matter of III-395, 396
Osborn: Succession of II-197
Osborn v. Cook I-126
Osborne v. Graham III-419
Osborne v. McAlpine II-195, 438, 444, 661
v. Tunis I-818
v. Varney I-418
Osgood v. Bliss I-78, 238
v. Breed I-90. II-899
v. Foster II-677
v. Franklin II-154
v. Lovering II-360, 406
Osmun v. Porter II-782
Ostendorff: Ex parte I-534
Ostrander v. Spickard II-787
Oswalt v. Moore II-251
Oswold's Appeal III-418
Otis v. Brown II-432
v. Prince II-587
Otterson v. Middleton II-739
Otto v. Doty I-25
Ould v. Washington Hospital II-300, 308
Outcalt v. Appleby II-618. III-413
Outlaw v. Farmer I-316, 488
v. Hurdle I-149
Overall v. Overall I-184, 194
Overdieck: Will of II-512
Overly v. Overly III-362
Overstreet v. Potts III-414
Overton v. Johnson III-185
v. Overton I-119, 403
Owen v. Owen II-508, 516
Owens v. Bennett I-95, 107
v. Blanchard II-113
v. Bloomer II-171, 172. III-176
v. Childs III-176
v. Claytor III-191
v. Collinson II-249, 267. III-373
v. Corbitt II-242, 243
v. Dunn II-350
v. Link I-706
v. Missionary Soc. II-317, 321
v. Owens III-582
v. Phelps III-284
Owings v. Bates I-529, 539, 702
v. Owings I-323
Oyster v. Knull I-156
v. Oyster II-806

P.

Pace v. Burton III-414
v. Pace I-688. II-574, 576
Pacheco: Estate of I-534
Packard v. Marshall I-799
Packer v. Wilson II-86. III-478, 474
Paddock v. Pulsifer III-510
Padfield v. Padfield I-240
Paff v. Kinney III-420
Page's Appeal II-517, 752, 757
Page: Estate of I-806. III-561
Page: Matter of I-388, 536, 699
Page v. Estes II-74
v. Foust II-462
v. Frazer II-563, 566
v. Gilbert II-343
v. Page II-894
v. Parker II-912
v. Patton II-268
v. Tucker II-23. III-472
v. Whidden II-236, 563, 578
Paige v. Fagan III-505
v. Paige III-184
Paine v. Parsons II-643
v. Paulk II-868
v. Prentiss II-512
v. Stone I-646, 651
v. Ulmer II-27
Painter v. Painter I-417
Paisley: Appeal of I-158
Palicio v. Bigne III-310
Palm's Appeal II-225
Palmateer v. Tilton III-580
Palmer: Estate of II-851
Palmer: Matter of II-23. III-132, 421
Palmer v. Armstrong III-187, 192
v. Dunham II-390
v. Hanna III-580
v. Horn III-388, 390
v. Moore III-320
v. Palmer II-52. III-130, 182
v. Phœnix Ins. Co. III-476
v. Pollock I-635. II-161, 238, 240
v. Simpson III-192, 200
v. Steiner II-50. III-477
v. Stevens III-139, 513
v. Union Bank II-305, 478
v. Voorhis II-789. 864
Palomares: Estate of II-872
Pancoast v. Graham I-30, 50, 51
Pardue v. Givens II-574
Paret v. Keneally I-566
v. N. Y. Elevated R'wy Co. II-53
Parham v. Stith II-134
Parish v. Stone I-897
Park v. Baker I-866
v. Park III-665
Parker's Appeal II-479, 926
Parker v. Bogardus I-265
v. Brown I-675
v. Chambers II-680
v. Chestnutt II-51
v. Combs II-244
v. Converse II-344
Parker v. Cowell II-306, 321, 322
v. Fassit III-566
v. Flagg III-510
v. Gainer II-213
v. Glover II-536. III-366
v. Grant III-444
v. Gregg II-258
v. Hayden II-788
v. Howell III-375
v. Kuckens II-844
v. Lewis II-169
v. Linden I-802. II-864, 865
v. Marston I-897
v. Maxwell III-579
v. Moore. II-479
v. Parker I-78, 468, 674. II-571, 786. III-508
v. Providence &c. Co. II-32
v. Sears I-324
v. Thompson I-319. III-285
v. Townsend Nat'l Bank II-845
v. Wasley I-9
Parkham v. Stith III-358
Parkinson: Appeal of I-800, 802
Parkinson v. Jacobson III-179
v. Parkinson II-440, 670, 753, 754
Parkman v. Bowdoin II-354, 363
v. Suffolk Savings Bk. III-138
Parks v. Aldridge III-195
v. American Home Miss'ry Soc. II-323
v. Parks II-893, 898
v. Rucker II-181

Parmelee v. Oswego &c. R. R. II-562
Parramore v. Taylor I-129
Parrand v. Jones I-23
Parrish v. Groomes II-341
v. Vaughan II-583
Parrott v. Kelly I-77
Parsons: Matter of II-194
Parsons v. Boyd I-796
v. Lyman I-443. II-516, 927, III-136
v. Milford I-641
v. Mills II-253
v. Parsons I-65, 168. 409, 427
v. Winslow II-385, 588
Partee v. Mathews II-227. III-511
Partridge v. Cavender II-574
v. Colgate II-823
v. Havens II-892
v. Mitchell III-574
Paschal v. Acklin II-304, 315, 323
Paschall v. Hallman II-844
Passmore's Appeal II-514, 537
Passmore v. Passmore III-285
Patch v. White I-422, 427
Patchen v. Patchen II-361
Pate v. Joe I-411
v. Kennedy II-133
v. Oliver III-284
Paterson v. Ellis II-518
Paton: Matter of III-445
Patrick v. Howard I-344
v. Petty III-570
Patridge v. Patridge II-609
Pattee v. Lowe II-254
Patten: Estate of I-704, 711, II-181
Patten: Goods of III-361
Patten v. Tallman I-118, 675, II-583
Patterson v. Booth III-423
v. Cobb III-576
v. Craig III-314
v. Devlin II-457
v. Dushance II-847
v. Hawthorn II-501, 534
v. Hickey I-187
v. High I-530
v. Nichol III-416
v. Pagan I-432
v. Patterson II-169, 171, 559, III-313, 477
v. Ransom I-138
v. Read II-483
v. Stewart II-705
v. Swallow II-828, 829
v. Wadsworth III-355, 357, 360
v. Wilson II-461
Patteson v. Bondurant III-359
Patton: Appeal of I-592, 721
Patton: Estate of II-863
Patton v. Hope I-134, 144, 147
v. Patton II-287
Paul v. Ball II-472
v. Willis I-544
Paulding: Will of I-90, 439
Paulding v. Sharkey III-394
Pauley v. Langdon III-207
Paulmier v. Erie R. R. II-30
Paullissen v. Look II-865
Paup v. Mingo II-839
v. Sylvester II-472
Pawlet v. Clark II-321
Pawtucket v. Ballow I-129, 135
Paxson v. Potts I-419
Paxton: Matter of II-363
Paxton v. Meyer III-584
v. Potts III-195
Payne v. Dejean III-586
v. Flournoy II-136
v. Harris I-818
v. Hood III-505
v. Matthews III-286
v. Miller III-581
v. Payne I-120, 249, 255
v. Pusey II-225, 268. III-374
v. Rosser II-541
Payne v. Smith III-558
Payson v. Hadduck III-207
Payton v. Bowen II-790, 791
Peacock v. Albin II-384
v. Harris III-367, 659
v. Newbold III-659
Peacocke v. Leffler III-422
Peake v. Jenkins I-134
Peale: Estate of II-341, 351
Peale v. White II-478
Pearce: Ex Parte III-411
Pearce v. Castrix I-534
v. Cooke III-286
v. Gleaves II-889
v Savage I-799
v. Smith II-113
Pearcy v. Greenwell III-192. 199
Pearson: Ex Parte II-871
Pearson v. Carlton II-886
v. Darrington II-869. II-396, 446
Pease v. Barnett III-582
v. Egan II-227
v. Phelps III-281
v. Shirlock III-472
Peaslee v. Fletche II-825
v. Kelly III-586
Peay v. Barber II-825
v. Fleming II-134
Peachin: Estate of II-540
Peck: Estate of III-438
Peck v. Belden I-68
v. Botsford III-576
v. Cary I-30, 120, 125, 137
v. Mead III-135, 583
v. Peck I-453, 631
Peckham v. Newton II-427, 829, III-367
v. O'Hara III-585
Peckinbaugh v. Quillin I-315
Pedrick v. Pedrick III-377
Peeble: Appeal of I-721, 722
Peebles: Estate of II-792, 873
Peebles v. Acker III-193
v. North Carolina R. R. Co. II-100
v. Watts I-562, 565
Peer v. Cookeron III-473
Peffer v. Steiner I-793
Peirce v. Graham III-180
Pelamourges v. Clark I-410
Pelham v. Taylor II-705
Pell v. Ball II-437, 461, 498. III-215
v. Mercer II-300, 311, 315, 427
Pellizzano v. Reppert II-790
Pelton: Matter of I-358
Pelton v. Johnson II-240
Peltz v. Schultes II-162
Pemberton: Matter of I-69
Pemberton v. Parke II-870
Pence v. Makepeace I-652
Pendarvis v. Wall II-184
Pendlay v. Eaton I-23
Pendle v. Waite II-181
Pendleton v. Andrews III-566
v. Hoomes II-342
Penhallow v. Kimball II-778, 779
Penn v. Guggenheimer II-775, 780
v. Ogelsby III-580
Pennell's Appeal II-911
Pennie v. Hildreth III-511
Penniman v. French II-469
Pennington v. Pennington II-510
Pennock: Estate of I-157, II-390
Pennock v. Eagles II-341. III-201
Pennoyer v. Wadhams II-305, 312, 316
Pennsylvania Co.'s Appeal II-478
Pennsylvania Fire Insurance Co. v. Stokes II-774, 778, 779
Penny v. Croul II-275, 307. III-578
People v. Admire II-799
v. Brooks III-206
People v. Conklin I-13. II-273
v. Cortels I-647
v. Detroit Board III-183
v. Eastwood I-408
v. Gibbs III-287
v. Gould I-653
v. Gray I-653. II-243
v. Houghtaling II-236
v. Hunter I-640
v. Jennings II-344, 545
v. Judges III-584, 586
v. Keyser II-153
v. Knickerbocker I-379, 467
v. Lott I-631, 634
v. Marshall I-358
v. Miner II-153
v. Mutual Benefit Ass'n III-435
v. Olvera II-198
v. Phelps II-255. III-132. 374
v. Simonson II-274. III-557
v. Snyder I-14
v. Stacey I-648
v. White I-483, 561, 708, 794. II-234
Peoples Savings Bank v. Wilcox I-353
Pepoon: Will of I-144
Pepper: Estate of II-428, 618, 717
Pepper v. Donnelly I-629, 634
v. Sidwell II-243
v. Zahnsinger III-180
Peppitt: Matter of II-345
Peralta v. Castro 119, 404
Perez v. Perez I-386
Peries v. Aycinena III-479
Perin v. Carey II-274, 285, 303, 304, 312
Perine v. Petty III-418
Perjue v. Perjue I-179
Perkins v. Caldwell III-185, 412
v. Caughlan I-604
v. Emory III-199
v. Hickley III-131
v. Hollister III-365
v. Jones I-148
v. Ladd I-308
v. Lewis I-362
v. Little II-792, 794
v. Mathes II-486, 489, 661
v. Onyett II-239, 241
v. Perkins I-22, 799. III-131
v. Wood I-628
Perrill v. Nichols III-380
Perrin v. Calhoun I-575. II-162. III-318, 510
v. Sargent III-557
Perrine v. Applegate I-351
v. Petty II-154. III-365, 395
v. Vreeland III-360
Perry v. Boileau II-732
v. Campbell III-353
v. Carmichael II-32
v. Cunningham III-314
v. DeWolf I-298, 294, 334
v. Ellis III-575
v. Field III-320, 667
v. Hale II-710. III-187, 192, 198, 200, 202
v. High II-825
v. Lawber II-354
v. Logan II-496
v. Maxwell II-436, 476, 489, 612, III-216, 440
v. Rhodes II-348, 517
v. St. Joseph &c. R. R. Co. I-351, 352. II-34
v. Smoot III-367
v. West II-242
v. Wooten III-357
Personette v. Johnson III-170, 175
v. Personette II-268
Person's Appeal II-882
Persons v. Snook II-349, 773, 774
Peter: Appeal of III-362

Peter: Estate of II-395
Peter v. Beverly I-800, 803. II-154. III-394
Peters v. Bank III-478
v. Peters I-692
v. Public Administrator I-529, 532, 536
v. Siders II-491
v. Spillman I-265
v. Stuart II-248
Peterson: Appeal of I-803. II-478, 528
Peterson: Estate of III-371
Peterson v. Chemical Bank II-133. III-135, 476
v. Webb II-399
Petigru v. Ferguson I-573, 574, 700, 708
Petrie: Matter of III-369
Petrie v. Clark III-420
v. Mott III-578
v. Petrie II-672
v. Voorhees II-22, 610
Petro v. Cassiday II-560, 565, 584
Pettee v. Wilmarth II-868
Pettengill v. Patterson II-103
Pettes v. Bingham I-22, 133
v. Brigham I-132
Pettigrew v. Pettigrew III-558
Pettingill v. Pettingill I-626, 633, III-371
Pettit: Matter of III-193
Pettit v. Black I-354, 468
Pettus v. Clawson III-414, 416
v. McClannahan III-177
Petty v. Young III-653, 657
Petway v. Powell II-342
Peveler v. Peveler I-649, 653
Peynardo v. Peynardo II-275
Peyser: Matter of II-225. III-444
Peyser v. Wendt III-658
Peyton v. Smith III-417, 438
Pfeiffer v. Suss II-240
Pfuelb: Estate of I-94
Phalen: Matter of I-709, 712
Pharis v. Leachman II-244
Pharr v. Belmont I-117, 120
Phaup v. Wooldridge I-237
Phelps: Re I-105
Phelps v. Bates II-583
v. Culver II-22
v. McLaughlin II-890
v. Phelps I-804. II-790, 875
v. Rice III-476, 477
v. Robbins II-824
v. Thompson II-246
Philadelphia: Appeal of I-804
Philadelphia v. Davis II-774
v. Elliot II-274, 303
v. Girard II-307, 315
Philadelphia Baptist Ass'n v. Hart II-271
Philadelphia Trust Co. v. Drinkhouse I-24, 41, 47
Philadelphia Trust &c. Co. v. Lippincott II-155
Philadelphia &c. Railroad Co. v. Lehigh Navigation Co. I-796
Philips v. Philips I-450
Phillips: Estate of II-753
Phillips: Matter of II-848
Phillips: Will of I-116, 127, 134
Phillips v. Allegheny &c. R. R. II-250. III-666
v. Beall II-360
v. Breck II-25
v. Chappell II-893, 897
v. Chater I-42, 44, 46
v. Davis III-371
v. Ferguson II-589
v. Johnson II-344, 534, 536
v. McCombs II-612, 617
v. Medbury II-588
v. Phillips I-120, 158, 161, 386, II-863
Phillips v. Smith I-626
Phillips Academy v. King II-304
Phinizy v. Foster II-541
Phinney: Estate of III-186
Phipps v. Addition III-562
v. Hope 1-9
Phoenix v. Livingston III-440, 442
Phorbe v. Bogges I-170
Phyfe: Matter of II-234, 248, 249
Phyfe v. Phyfe II-410
Piatt v. Longworth II-140. III-419, 423, 660
v. McCullough I-107
Pick v. Strong I-676
Pickel v. Alpaugh II-184
Pickens: Estate of III-444
Pickens v. Miller I-651. III-414, 415
Pickering v. Langdon II-575
v. Pendexter I-271, 539
v. Pickering II-559
v. Shotwell II-307, 316
v. Welting I-611
Pickett v. Boyd III-565
v. Gilmer I-650
v. Hobdy III-478
v. Leonard I-242
v. Peay II-788
v. Pickett III-411
v. Southerland II-343
v. Stewart III-506
Pico: Estate of I-545
Pico v. De La Guerra II-241
Picot v. Armistead II-342, 518, 546
v. Bates III-658, 660
Picquet: Appeal of I-632
Picquet v. Swan I-78
Pidcock v. Potter I-409
Pierce: Estate of II-664. 830
Pierce v. Allen II-252. III-375
v. Case I-794
v. Chamberlain II-752
v. Holzer III-377
v. Lee II-535
v. Livingston III-203, 654
v. Pierce I-11, 51, 55, 62, 416, II-478
v. Prescott I-677
v. Proprietors II-28
v. Wallace I-626, 641
Piercy v. Piercy II-791
Pierpont v. Patrick I-253
Pierrepont v. Edwards II-664
Pigg v. Carroll II-900
Pike: Estate of I-702, 708
Pike: Matter of III-442
Pike v. Thorp II-242
v. Stephenson II-344, 534
v. Walley II-757
Pilcher: Succession of III-286
Pilcher v. Drennan I-647
Pilkins v. Peet III-202
Pilling v. Pilling I-47
Pinckard v. Pinckard II-196, 198
Pinckney: Will of I-7, 227
Pinckney v. Pinckney II-518
v. Singleton III-315
v. Wallace I-798
Pindell v. Pindell II-791
Pingree v. Jones I-62
Pinkerton v. Sargent II-778
Pinkham v. Blair II-350, 399
v. Grant I-488
Pinkstaff v. People I-635
Pinneo v. Goodspeed II-198, III-374
Pinney: Will of I-48, 409, 424
Pinney v. Barnes II-112
v. Fancher II-541
v. McGregory I-338, 349, 484, 574, 612
Piper: Estate of II-620, 627. III-220
Piper v. Barse II-648
v. Goodwin III-314
Piper v. Moulton II-275, 281, 304, 573
v. Piper II-867
Pippin v. Ellison II-461
Pirtle v. Cowan II-680
Pistorius: Appeal of II-171
Pitcher v. Armat I-538
Pitkin v. Pitkin III-319
Pitman v. Ashley III-509
v. Burr II-497
v. Johnson III-558, 559
Pitney v. Everson III-442
Pitt v. Pitt II-559
Pitts v. Melset I-354, 355, 673
v. Singleton III-359
Pittsburgh R. R. Co. v. Swinney II-24
Place: Matter of II-113
Place v. Hayward II-85
v. Oldham II-211, 216, 227, III-374
Plain v. Roth III-580
Plaisance: Estate of I-540
Planchet: Succession of I-795
Plank: Estate of II-380
Plant v. Plant III-280, 658
Planters v. Neel III-582
Plath: Matter of I 611
Platt's Appeal II-876
Platt v. Grubb I-794
v. Mickle II-399
v. Moore II-23, 438, 755. III-439
v. Platt I-793. II-181, 185, 560, III-131, 181, 182, 318, 584
v. Robins III-583
v. Wittington II-579
Pleasant's Appeal III-370
Pleasants v. Dunkin I-677, 678
v. Flood III-186
v. Glasscock I-312
Pleasonton's Appeal II-539
Plimpton v. Fuller III-189
Plott v. Moody II-471
Plowman v. Henderson I-539, 651, 701
Plume v. Howard I-676
v. Howard Savings Institution I-483, 676, 678
Plumer v. McDonald Lumber Co. II-101
v. Plumer I-868
Plumleigh v. Cook II-300
Plummer v. Doughty I-818
Poang v. Gadsden II-912
Pole v. Simmons II-248
Polhemus v. Middleton II-197. III-352
Polk v. Ralston II-273
Pollard v. Barkley II-195. III-656
v. Buttery III-480
v. Mohler I-325, 332, 546
v. Pollard II-670, 753, III-558
v. Sears II-242. III-574
Polley v. Polley II-899
Pollock: Matter of II-437, 480, 481, 559, III-413
Pollock v. Glassell I-107, 135
v. Learned II-794
Pomeroy v. Mills III-439, 440, 441, 444
Pond v. Allen I-258. II-516. III-197, 509
v. Irwin II-912
v. Makepeace III-515
v. Sweeton III-470, 471
Pool v. Buffum I-103, 106, 114
v. Harrison II-827
v. Richardson I-406
Poole v. Jackson I-681
v. McLeod III-285
v. Munday III-316
Pope v. Alden III-582
v. Cutler I-434
v. Mathews III-365
v. Pickett I-679

Pope v. Tift II-588
Popham v. Spencer I-561
Porcher v. Daniel I-76
Porchet v. Scherzer II-888
Porschet v. Porschet I-66
Porter: Appeal of I-170. II. 383, 384, 899
Porter: Estate of II-171, 478. III-437
Porter v. Askew II-912
v. Dunn III-280, 581
v. Ford I-75, 127
v. Heydock II-927. III-135, 186
v. Jackson III-191. 202
v. Nelson III-579
v. Porter II-537, 895, 898
v. Trail I-271, 432
Portman v. Klemish I-308
Portsmouth Ins. Co. v. Reynolds III-506
Post: Matter of II-534
Post v. Herbert II-341, 516
v. Hover III-507
v. Mackall III-217, 221
v. Mason I-60, 67, 68, 163, 674, 675
v. Rivers II-478
v. Stevens III-446
Postell v. Postell I-800
Postley v. Cheyne I-624, 626, 702, II-152
Postmaster General v. Robbins II-214
Potter: Appeal of I-59. 62, 64, 65
Potter: Estate of II-411
Potter: Matter of III-421
Potter v. Adriance I-797
v. Brown I-242, 243. II-670, 792
v. Chapin II-320
v. Cummings I-647
v. McAlpine I-11, 22, 23, 24, 36, 41, 45, 47, 69, 144. II-181, 572
v. Ogden I-653. III-352
v. Thornton II-285, 305
v. Titcomb II-627. III-130
v. Van Vranken II-27
v. Worley II-786, 794
Potterfield v. Tallaferro II-196
Potts: Matter of II-587
Potts v. House I-18, 19, 34, 55, 410
v. Mayer III-581
v. Philadelphia Soc. II-303
v. Smith II-159
Potwine: Appeal of I-483
Poullain v. Brown III-560
Poulson: Estate of II-287, 740
Poulson v. Johnson III-194
Pounds v. Dale I-242
Powell's Appeal II-739
Powell: Estate of II-826
Powell: Succession of II-845
Powell v. Biddle II-424
v. Boon III-368
v. Cooper III-416
v. Denning III-508
v. Hatch II-318
v. Hurst III-357, 360
v. Knox I-796
v. Powell III-416, 446, 580
v. State I-410
v. Thompson I-625
Power: Estate of I-298, 302, 318
Power v. Cassidy I-424. II-318, 319, 606, 829
v. Davis I-103
v. Haffey II-913
v. Speckman I-635, 642, 678. III-585
Powers: Matter of II-268. III-263. 569
Powers v. Douglass II-252. III-558
v. McEachern II-365, 371
v. Powers II-250, 753
Prall v. Hamil II-138
v. Tilt II-186
Prater v. Whittle I-243, 674
Pratt's Appeal II-871
Pratt v. Atwood II-913
v. Douglas I-679. 780
v. Elkins III-581
v. Felton II-782, 783, 789
v. Flamer II-365, 382
v. Houghtaling III-168, 169, 175
v. Lamson II-237, 245
v. McGhee II-513
v. Northam III-136
v. Oliver I-794
v. Pratt II-847
v. Rice II-154
v. Stewart I-564. 565
Pratte v. Coffman I-843
Pray v. Stebbins I-794
v. Waterston I-264
Preacher's Aid Soc. v. Rich II-321, 322, 427
Preble v. Preble III-582
Prendergass v. Beale I-351
Prentice v. Dehon II-114
v. Jansen I-801. III-569
Prentiss v. Prentiss I-244
Prenzel: Estate of I-374
Presbyt. Ch. v. McElhinney III-176
Prescott: Estate of III-315, 417
Prescott: Matter of I-183, 184, 196
Prescott v. Durfee I-484
v. Farmer I-649, II-161
v. Knowles II-28
v. Moore I-575. III-364
v. Morse II-111, 517
v. Pitts I-641
v. Prescott II-382, 496, 510, 825, 826, 828, 829
President &c. v. Norwood II-427
Preston v. Brant II-385
v. Cole II-912
v. Cutler III-576, 577
v. Hoskins II-912
v. Jones II-775
v. Knapp II-244
v. Palmer II-269
Pretty v. Young II-250
Prettyman v. Wapples III-561
Prevost v. Abercrombie III-139
v. Gratz III-442
Prewitt v. Wartham III-176
Price: Estate of II-710
Price v. Brayton I-843
v. Brown III-287, 658
v. Douglass II-646
v. Harrison II-214
v. Jones I-149
v. Mace III-516
v. Maxwell I-204, 214, 230. II-287, 304
v. Nesbit II-140
v. Pickett II-50
v. Price III-657
v. Springfield Real Estate Ass'n II-140
v. Sisson II-388
v. Watkins II-518. 546
v. Winter II-140
v. Woodford II-789
Prichard v. Thompson II-319
Priest v. Glenn II-245
v. Spier III-167
v. Watkins I-316. 363
Prigden v. Prigden I-134
Primm v. Stewart I-546
Primmer v. Primmer I-55, 58, 63
Prince v. Hazelton I-169
Princeton v. Adams II-564
Pringle v. Dorsey II-318
v. Dunkley II-588
v. McPherson I-202. III-279
Pringle v. Pringle III-474
Prior: Matter of II-750
Prior v. Talbot III-378
Pritchard v. Hicks II-491
Prive v. Foucher II-267. 289
Probate Court v. Brainard I-649
v. Hazard III-410
v. Hull I-644
v. Kimball I-642. II-761. III-137
Probate Judge v. Adams I-647
v. Arrington I-651
v. Claggett I-649. II-160
v. Couch I-641. 642
v. Dockray I-649
v. Ellis II-246. III-576
v. Hazard I-638
v. Heydock I-638
v. Kimball I-642
v. Lane I-651. III-583
v. Mathers III-365
Procter v. Newhall II-849
Proctor v. Clark II-381
v. Clarke I-58, 62, 237, 258
v. Ferebee I-800
v. Heyer III-509. 653
v. Proctor II-361. III-575
v. Robinson II-457. 706
v. Smith II-352
v. Wanmaker I-701
Propst v. Roseman II-680
Proseus v. McIntyre II-900
Prot. Epis. Soc. v. Churchman II-316
Prothro v. Prothro II-140
Prouty v. Mather III-320
Provenchere's Appeal II-507, 518
Provis v. Reed I-179
Provost v. Abercrombie II-276
Prowitt v. Rodman II-342, 362
Pruden v. Pruden I-264
Pryer v. Howe III-507, 657
v. Mark III-192, 202
Pryor v. Downey I-299, 306, 311, III-179
v. Mizner I-712
v. West II-867
Prickett v. James II-244
v. McCall II-242
Public Administrator v. Peters I-701
Public Works v. Columbia Coll. III-207
Pugh: Estate of I-564
Pugh v. Pugh II-360
v. Russell III-187. 220. 221
Pugsley v. Aiken III-563
Pull v. Bull II-322
Puller v. Puller I-417, 419
Pulliam v. Pulliam I-802. II-438. III-221
Pulling v. Durfee II-866
Pullman v. Willets II-195, 196
Pumphry v. Pumphry II-790
Purcell v. Carter II-716. III-206
Purdin v. Archer II-239
Purdy v. Gault I-341
v. Hall I-386
Purnell v. Dudley II-471
Pursel v. Pursel II-181. III-374. 574
Pursell v. Fry III-581
Pusey v. Clemson II-625. III-261
Putnam v. Gleason II-537
v. Pitney I-429, 436, 443
v. Putnam II-506, 822, 823
v. Story II-537
Putnam Free School v. Fisher I-797. II-155
Putney v. Fletcher I-277
Pyatt v. Pyatt II-867
Pyle: Appeal of I-604

Q.

Quackenbush v. Ehle III-280
v. Quackenbush III-198, 202
v. Taylor II-875
Quain's Appeal III-284
Quarles v. Garrett II-780, 782
v. Quarles II-891, 897
Quarrier v. Quarrier III-562
Quidort v. Pergeaux I-483, 675
Quigg v. Kittredge II-243
Quigley v. Harold III-281
Quimby v. Frost III-217
v. Manhattan Cloth Co. I-867
Quin's Estate III-4
Quin: Matter of II-197, 489
Quin v. Hill III-563
v. Moore II-29
Quincy v. Rogers I-229. II-606
Quinn: Matter of III-419
Quinn v. Hill II-170
v. Moss II-717
v. Quinn II-196
v. Shields II-325
Quintard v. Morgan I-562. II-152

R.

Raborg v. Hammond II-27
Rabun v. Rabun II-848
Racouliat v. Sauserein III-584
Radde: Matter of III-568, 666
Rader v. Yeargin I-639. III-355
Radford v. Fowlkes III-423
v. Radford I-271, 531
Radovich: Estate of III-219
Radovich: Matter of I-714. III-353
Raglan v. Calhoun I-636
Ragland v. King I-573, 708
Ragsdale v. Booker I-4
v. Parrish II-786, 792
Raiford v. Raiford II-893, 898
Rail v. Dotson II-534
Railsbach v. Lovejoy II-535
Railway Co. v. Richards II-30
Raines v. Corbin II-774
v. Raines III-359, 436
Rainey v. Laing II-288
Rains v. Hays II-891
Rainwater v. Harris I-398. III-580
Rajnowsky v. Detroit &c. R. R. Co. I-533
Rakestraw v. Rakestraw I-798
Ralston v. Telfair I-418
v. Thornton II-865
Rambler v. Tyron I-410
Rambo v. Rumer II-676. III-193
Rammelsberg v. Mitchell III-316
Ramsdell v. Ramsdell II-575
Ramsdill v. Wentworth I-244, 420, 426. II-491
Ramsey's Appeal II-212, 226
Ramsey: Estate of II-348
Ramsey v. Abrams II-891
v. Hanlon I-801, 802, 805
v. Ramsey III-437
Rand: Estate of I-159
Rand v. Hubbard I-364, 367, 368, 488. II-132. III-354
Randal v. Marble II-587
Randall: Matter of III-131, 375
Randall v. N. W. Telegraph Co. II-33
v. Shrader I-530
Randel v. Dyett III-377, 472
Randell: Matter of II-218, 252, III-282, 316
Randle v. Carter I-529, 625, 693, III-201
Randolph v. Hughes I-710
v. Randolph II-342, 653
Raney v. Heath II-519
Rank v. Camp II-692
v. Rank I-73
Ranke: Estate of II-874
Rankin v. Hannan III-581
v. Rankin I-42, 57, 91
Ranney: Estate of I-294, 576, III-283, 411
Ransom: Matter of I-808
Ransom v. Geer III-512, 657
Ransom v. N. Y. II-584
v. Nichols II-855
v. Schmela III-582
v. Thompson II-850
Ransome v. Beardon I-709
Rapalje v. Norsworth III-416
Rapier v. Holland III-477
Rapp's Appeal III-179
Rapp v. Matthews II-382
v. Reehling II-428
Rappelyea v. Russell II-169, 170, III-313
Ratcliff v. Ratcliff I-674
Rattoon v. Overasker I-316, 363
Rauchfuss v. Rauchfuss II-886, III-186
Rauth v. Davenport II-242
Ravenscraft v. Ravenscraft III-512
Rawle's Appeal III-167
Rawling v. Landes I-800, 801, II-534, 535
Rawlins v. Rawlins I-531. III-477
Rawson v. Copland III-476, 478
v. Knight II-240. III-581
v. Piper I-644
v. Rawson II-384
Ray v. Dennis III-477, 478
v. Doughty II-112. III-393, 394
v. Hill I-20, 103, 181
v. Hodge II-283
v. Loper II-893, 898, 899
v. Simmons III-652
v. Strickland III-574
v. Walton I-126
Rayfield v. Gaines II-589
Raymond v. Dayton I-195
Raynor v. Gordon III-176, 653
v. Pearsall III-356
v. Raynor III-175
Rea v. Englesing I-538
v. Rhodes II-680
Read: Estate of II-792
Read: Matter of III-410
Read v. Cather III-196
v. Head II-479, 481
v. Patterson III-206, 377
v. Williams II-319
Reading v. Blackwell I-800, 802
v. Wier II-198
Reagan v. Long I-309, 320
v. Stanley I-150, 185
Reaver v. Davis III-565
Reaves v. Craig II-563
v. Garrett II-775, 783
Reber's Appeal II-251
Reber v. Dowling II-308
Rebhan v. Miller I-700, 721
Record v. Howard I-677, 700
Rector v. Conway III-574
Redd v. Davis III-218
Redding v. Boyd I-795
Reddish v. Carter II-382
Redfield v. Redfield I-174, 218, 254
Redmond v. Burrough II-398
Reed's Appeal II-527
Reed: Estate of II-760, 830, 865
Reed v. Buckley II-518
v. Colby II-239. III-169
v. Commonwealth I-638
v. Dickerman II-781, 791
v. Emory II-213
v. Gilbert III-581
v. Hazleton I-151, 152, 154
v. Northeastern R. R. II-29
v. Reed II-636
v. Watson I-120, 126
v. Williams I-802
v. Wilson III-411
v. Woodward I-159
Reeder v. Spearman II-353, 354
Reedy v. Armistead III-655
Reese's Appeal II-183
Reese v. Portsmouth Probate Court I-214
Reeve v. Cawley III-563
v. Crosby I-404
Reeves v. McMillan III-183
v. Reeves II-272, 826
v. Tappan II-158
v. Townsend I-483
Regan v. Stone III-362
Register v. Hensley II-785, 790
Reichard: Appeal of I-253
Reichenbach v. Ruddach I-24, 51
Reid v. Blackstone I-158
v. Borland I-230
v. Campbell II-786
v. Corrigan III-193
v. Walbach II-541
Reiff's Appeal II-541
Reigart v. Ross I-796
Reilly v. Dougherty I-398
Reinders v. Koppelman II-349, 351
Reinhardt: Estate of II-461
Reinhardt v. Gartrell I-344
Reinstein v. Smith III-320
Reipnuder v. Hunter II-574
Reish v. Commonwealth I-152
Reitter v. Fox I-418
Reitzell v. Miller II-247, 252, III-362
Remann v. Buckmaster III-580
Remington v. American Bible Soc. II-827. III-182
v. Walker III-411, 418, 658
Remsen v. Brinkerhoff I-127
Renaker v. Lemon II-507
Renan v. Banks III-205
Renick v. Renick III-443
Renner v. Rose II-789
Rennie v. Crumbie III-199, 655
Reno v. Davis II-491
Renshaw v. Williams III-437
Renwick v. Smith II-465
Reuff v. Coleman II-563, 566
Rex v. Creed III-207
v. Nevins II-135
Rexroad v. McQuain III-559

Rexroad v. Wells III-509
Reyher v. Reyher III-193
Reynold v. Demarest II-563
Reynolds' Appeal II-472
Reynolds' Appellant II-912
Reynolds: Estate of II-867
Reynolds: Matter of II-170, 460
Reynolds v. Adams I-66, 425
v. Bond III-199, 200
v. Bristow II-289, 307
v. Brumagim III-360
v. Canal & Banking Co. II-51, 195. III-437
v. Crook III-560
v. Hamilton III-576
v. Jackson III-422, 424, 436
v. McMullen I-676
v. Rees III-582
v. Reynolds I-20, 130. II-894, III-413
v. Robinson II-611, 617
v. Root I-11, 24, 47, 66
v. Schmidt III-168, 176
v. Zenk I-705. III-360
Rhaine v. Lewis II-138
Rhea v. Green III-376
Rhett v. Mason I-158. II-559
Rhinehart v. Murray III-178
v. Rhinehart III-657
Rhoades v. Rhoades III-199
Rhode Island Hospital v. Olney II-316
Rhodes: Estate of II-668, III-131
Rhodes v. Casey III-586
v. Crutchfield II-50
v. Pray III-579
v. Rhodes II-272
v. Spaw II-534
v. Vinson I-198, 199, 458
Rhorer v. Stehman I-118
Rhymer's Appeal II-287
Ricard v. Williams III-169
Ricaud: Estate of II-846, 865, III-371
Ricaud: Matter of III-440
Rice: Appellant III-285
Rice: Estate of I-704
Rice v. Bank I-793
v. Boston Seaman's Aid Soc. II-604, 751
v. Dickerman III-180
v. Harbeson III-221
v. Hunt III-374
v. McReynolds II-75, 782
v. Rice I-11, 18, 24, 42, 47, 409
v. Saxon II-589, 776
Rich v. Bowker III-582
v. Gilkey I-199, 210
v. Gilson II-153
v. Rogers II-352
v. Sowles III-312, 585
v. Waters II-349, 537
Richards v. Dutch I-268. III-136, 137
v. Humphreys II-643
v. Hutchinson II-289
v. Merrill II-571
v. Miller I-417
v. Nightingale II-252. III-375
v. Pierce I-355, 674
Richardson: Estate of II-869, III-352
Richardson v. Bowen II-663
v. Butler III-176
v. Chappell III-205
v. Cooley III-470, 471
v. Hadsall III-580
v. Hall I-258. II-468, 664
v. Hazleton I-646
v. Hildreth I-818
v. Inglesby III-217
v. Jones II-140
v. Keel II-620, 849. III-477
v. Kennedy II-194, 196
v. Knight II-132. III-378
v. Lewis II-871
v. McLemore III-369
Richardson v. Martin II-380, 384
v. Merril II-183
v. Musser III-174
v. N. Y. etc., R. R. II-29, 30, 34
v. Oakman I-646
v. Paige II-740
v. Parker III-477
v. Richardson I-119, 403
v. Root III-666
v. Sage III-178
v. Wheatland II-349, 514, 537
v. Woodbury I-799
v. Wright III-579
Richart v. Richart II-781
Richey v. Johnson I-800. II-381
Richmond: Appeal of I-67
Richmond: Succession of II-183
Richmond v. Chicago, &c., R. R. II-34
v. Delany II-851
v. Foote III-176
v. Van Hook II-468, 510, 889
Richmond, &c., R. R. v. Johnston II-31
Richter v. Pollenhausen III-286
Rickenbacker v. Zimmerman II-894, 899
Rickenbaugh: Matter of III-440
Ricketsen v. Richardson II-244
Ricketts v. Ricketts III-577
Rickey v. Davis II-848
Ricks v. Gauntt I-652
Riddell v. Johnson I-67
Ridden v. Thrall I-896, 897
Riddle: Estate of II-895
Riddle v. Hill II-137. III-480
Ridgway: Matter of II-498, 546
Ridgway v. Manifold II-778, 778, 784.
Reigel's Appeal III-355
Riegelman v. McCoy II-693
v. Riegelman II-692
Rife: Matter of I-174
Riggs v. American Tract. Soc. I-36, 46
v. Cragg II-482. 692. III-413, 666, 667
v. Powell III-580
v. Riggs I-131
Riker v. Cornwell II-826
v. Leo II-425
Riley v. Conn. River R. R. II-29, 30
v. Diggs II-270, 271, 287. 427
v. Loughrey I-321
v. McCord I-676
v. Norman III-423
Rinard v. West III-207
Rindge v. Oliphant III-479
Rinehart v. Harrison I-802, 806
v. Rinehart I-336, 532. III-512
Ringhouse v. Keever I-546
Rinnsey v. Durham I-800
Ripley v. Samson III-374
Risk's Appeal II-453. III-217
Risly v. Wightman III-562
Ritch v. Morris II-700
Ritchey v. Withers II-874, III-422
Ritchie v. McAuslin I-600
Rittenhouse v. Ammerman III-314
Ritter's Appeal II-225. III-574, 575
Ritter: Estate of II-169, 216, 479. III-355
Rittgers v. Rittgers II-793
Rivers v. Trippe II-524, 545, 565
Rives v. Frizzle II-341
Rix v. Nevins III-477
Rizer: Estate of II-873
Rizer v. Gillpatrick III-473
v. Perry I-802. II-271
Roach v. Caraffa II-236
v. Hubbard III-394
v. White I-73
Roaf v. Knight III-653
Roanoke Navigation Co. v. Green I-293. II-111
Robards v. Wortham III-220
Robb v. Belt II-502
Robbins: Matter of II-181
Robbins v. Coffing III-567
v. Gleason II-562
v. Mylne II-548
v. Swain II-643
v. Tafft I-545
v. Wolcott III-447
Robeno v. Marlatt I-241. 244
Roberson v. Nail II-900
Robert v. Coring II-645
Roberts' Appeal II-482, 518
Roberts v. Abbott I-397, 398
v. Brinker II-514, 516, 517, 565, 823
v. Burton II-254
v. Elliot I-265
v. Flanagan I-385, 386
v. Flatt II-239, 242, 243
v. Frawick I-410
v. Huddleston II-848
v. Johns II-139. III-423, 424, 565, 572
v. Levy II-241
v. Lisenber II-36
v. McKimmon II-867
v. McMillan I-392, 394
v. Malin II-520, 757
v. Ogbourne II-349, 382
v. Pierce III-580
v. Spencer II-238, 246
v. Swift III-281
v. Thomas III-395
v. Weatherford II-642
v. Welch I-4, 129
Robertshaw v. Henway I-793, 794
Robertson v. Demoss II-235
v. Gains I-331
v. McGeoch I-333, 334
v. Morrell II-563, 566
v. Phillip I-866
v. Pickrell I-679
v. Robertson II-890
v. Stephens II-773, 778
v. Wilson II-539
Robeson v. Niles III-280, 568
Robie: Estate of I-536
Robinett's Appeal III-419, 446
Robins v. Arnold II-243
v. McClure II-855
Robinson's Appeal III-394
Robinson: Estate of I-593. II-274, 302, 314, 528. III-665
Robinson: Matter of I-336, II-361
Robinson v. Adams I-34
v. Allen I-674. II-215
v. Bennett II-101
v. Bishop I-418
v. Brewster I-149
v. Diarmid II-343
v. Dibble III-581
v. Duvall I-794
v. Hodge III-575
v. Hutchinson I-23
v. King I-131
v. Lane III-315
v. McDiarmid III-509
v. McDonald II-85
v. McIver III-198
v. Martin II-822
v. Millard I-639, 640
v. Ostendorff I-565
v. Randolph II-574
v. Ring I-710. III-424
v. Robinson II-212, 892, 898. III-581
v. Simmons III-317
v. Smith I-198
Robison v. Furman III-173
Rocco v. Cicalla II-869
Roche v. Ware III-579
Rochelle v. Tompkins II-384

Rochester: Matter of III-190, 195
Rockhold v. Blevins II-135, III-359
Rockwell v. Young I-320, 322, III-130
Rockwood v. Wiggin I-896
Roddan v. Doane II-240
Rodenbach's Appeal III-132
Roderigas v. East River Savings Institution I-378, 678
Rodman v. Fincke II-754
v. Rodman I-843. III-352
Roe: Matter of I-798
Roe v. Taylor I-58, 63, 410
v. Vingut I-798
Rogers: Estate of III-442
Rogers: Matter of II-739. III-4
Rogers v. Birckhouse II-384
v. Clements II-849
v. Clemmans III-184
v. Diamond I-58, 120, 125, 129
v. Dively I-592
v. Fort III-420
v. French I-420. II-643
v. Gooch III-474
v. Grant III-575
v. Hand II-612. III-361
v. Hosack III-131
v. Huggins III-585
v. Kennard I-676
v. Law II-585
v. Marker III-472
v. Meixel I-565
v. Miller II-918
v. Mitchell II-233, 241
v. Murdock II-620, 849
v. Rogers I-354, 468, 627, 677, II-251, 354, 535, 540, 750, III-219
v. Squires II-137. III-377
v. State II-212
v. Traphagen II-847
v. Trevathan II-789
v. Tullos III-359, 416
v. Weaver III-226, 252
v. Wilson III-574
v. Windoes II-27
v. Zook II-132, 136. III-377
Rohde v. Bruner II-196
Rolain v. Darby II-211
Roland v. Coleman III-565
v. Miller I-804
Rolfe v. Van Sickle III-372
Rollin v. Whipper I-701
Rollins v. Rice III-180
Rollwagen v. Rollwagen I-19, 63, 66
Rolph: Matter of II-197. 198
Romaine: Matter of III-4
Romaine v. Hendrickson I-799
Roman Catholic Asyl. v. Emmons II-476. 491
v. Straen II-74
Roman Catholic German Church v. Wachter III-191
Roman Catholic Orphan Asylum v. Strain I-794
Romero: Estate of II-247
Romero: Succession of I-534
Roof v. Knight II-246
Roome v. Philip I-561. II-517, 547
Rooney: Matter of II-171
Rooney v. Minor III-579
Roosevelt v Ellithorp II-855
v. Thurman II-576
Root: Matter of III-194. 199
Root v. Taylor III-478
Roper v. Burton I-576. III-415
Roquet v. Eldridge II-642
Rorback v. Dorsheimer II-160, III-659
Rorke v. McConville III-364
Rosa: Matter of I-259. II-825
Rosborough v. Hemphill II-491
Rose: Estate of III-315
Rose: Matter of III-445
Rose v. Clark II-844, 847
v. Eaton II-483
v. O'Brien II-849
v. Rose III-421
v. Winn I-633
Rosenberg v. Ford II-239
Rosenfield: Estate of III-172
Rosenfield: Matter of III-171, 180, 190, 203
Rosenthal v. Eneroldsen III-661
v. Magee II-250
v. Prussing I-583, 536
v. Remick I-612. III-177
Roser v. Franklin I-114
Ross: Estate of II-875
Ross: Matter of I-712
Ross v. Adams II-351, 536
v. Barclay I-564. II-162
v. Christman I-30
v. Davis II-684, 799
v. Drake I-801. II-344, 537
v. Ewer I-107
v. Harden III-315. 562
v. Hendrix III-660
v. Hine II-241
v. Julian III-179. 667
v. Mims I-705
v. Roberts I-800, 803
v. Ross I-5. II-886
v. Tremaine II-579
Rosser v. Franklin I-104, 120, 129
Rossetter v. Simmons II-459
Roster v. Morat II-249
Rotch v. Emerson II-305, 751
Roth: Estate of III-579
Roth: Succession of I-118, 148
Roth v. Holland III-169
v. Michalis I-150, 153
Rothgeb v. Mauck III-509
Rothmahler v. Cohen II-595
Rothmaker v. Myers I-423
Rothrock v. Gallaher III-579
Rottenberry v. Pipes II-871
Rottman v. Schmucker I-858
Rough v. Womer III-182
Rounfort v. McAlarney I-317, 318
Rountree v. Britt III-477
v. Dixon III-200
Roup v. Bradner III-184, 570
Rouse v. Morris I-170. II-172
Rousseau v. Bleau III-510, 582
Rowan: Estate of II-887
Rowan v. Warner II-361
v. Warren I-158
v. Woodward III-285
Rowe v. Lansing II-664
v. Parsons I-648
v. White II-565, 694, 708
Rowell v. Patterson II-245
Rowland: Estate of II-347, 845
Rowland: Matter of III-421
Rowland v. Best III-416
v. Madden II-237
v. Morgan III-438
v. Swope III-174
v. Windley II-234
Rowlett v. Rowlett II-344
Rowley v. Fair I-796. III-137, 138
v. Stray II-912
Rownds v. Bangor I-331
Roy v. Munroe I-801, 804
v. Rowzie II-301
v. Roy I-95, 108, 111
v. Segrist I-701
Royal: Estate of III-586
Royall v. Johnson III-506
Royce v. Adams I-565
Roys v. Vilas I-793. II-134
Rozelle v. Harmon I-299, 311
Rubeck v. Gardner I-13
Rubottom v. Morrow III-372
Ruby v. State I-626, 642
Ruch v. Biery II-865, 892, 893
Rucker v. Lambdin I-117, 118, 119, 131
Ruckstuhl: Estate of III-367
Ruddell v. Tyner II-247
Rudden v. McDonald I-129
Rudebaugh v. Rudebaugh II-536
Rudolph v. Underwood II-849, III-563
Ruff v. Rutherford II-360
Ruffin v. Farmer II-515, 516, 517
v. Harrison I-640. II-847
Rugg v. Rugg I-97, 119, 144
Ruggles v. Sherman III-583
Rule v. Maupin I-427
Rumpf v. Truelove I-703, 708, III-170
Rumph v. Hiott I-352
Rumrill v. First National Bank I-713
Rumsey: Matter of III-657
Rumsey: Will of III-319
Rumsey v. Durham II-344
v. Goldsmith I-126
Rundell v. Downing I-67
Rundle v. Allison III-559
Runkle v. Gates I-179
Runnels v. Runnels II-873
Ruppee v. Schlegel III-657
Ruppert v. Union Mut. Ins. II-23
Ruscher v. Knapp II-898
Rush v. McDermott III-183
v. Megee I-22, 26
v. Rush II-565. 584
Rusing v. Rusing II-381
Rusling v. Rusling I-60, 428. II-610, 793. III-285
Russell: Matter of I-458
Russell v. Allen II-304
v. Belcher I-351
v. Bristol II-245
v. Erwin I-573, 574. II-102
v. Falls I-131
v. Hallett II-497
v. Hubbard II-234. III-476
v. Lane II-241, 244. III-362
v. Minton II-611, 793
v. Russell II-362, 887. III-172
v. Sunbury II-100
v. Switzer I-138
Rust v. Bennett III-578
v. Billingslea II-215
v. Witherington I-299, 311
Ruston v. Ruston III-217
Ruth v. Kitterman III-132
v. Oberbrunner II-321
Rutherford: Matter of II-154
Rutherford v. Clark I-632
v. Mayo II-790
v. Morris I-47, 58, 63, 424, 428
v. Stamper III-205
v. Talent II-235
v. Thompson I-298, 309
v. Williams II-242
Rutledge v. Rutledge II-50, 536
Ryan v. Duncan III-505
v. Flanagan II-232, 233, 240
v. McLeod III-208
v. Van Arx II-213, 254
Ryder: Matter of II-250, 538, 541
Ryder v. Robinson III-284
v. Wilson II-233
Ryerson: Matter of II-708
Ryerson v. Ryerson III-559
Ryker v. Vawker III-178
Rynearson v. Turner I-642. III-206
Ryno v. Ryno I-483, 611
Ryon's Appeal II-563, 566

S.

Saam v. Saam I-317
Sabin v. Kelton III-476
Saboy: Succession of I-535
Sacia v. Bethoud II-138
Sacket v. Mallory II-823
Sackett: Estate of I-611
Saddler v. Kennedy III-584
Sadler v. Sadler I-169, 170
Saffold v. Banks III-138, 474
Safford v. Drew II-32
v. Houghton II-913
Saffran v. Kennedy II-112
Sager v. Gallaway II-520
v. Warley III-376
St. Charles Natl. Bank v. Payne III-578
Saint Croix Broom Corporation v. Brown II-246
Saint Francis Hospital v. Schenck II-286, 427
St. Hubert: Succession of I-712
St. John: Estate of III-583
St. John: Matter of II-216
St. John v. Hodges III-135
St. John v. McKee II-195
St. Jurgo v. Dunscomb I-563
St. Leger: Appeal of I-67
St. Louis Hospital v. Wegman I-104
v. Williams I-104
St. Louis &c. R. R. v. Needham II-31
St. Luke's Home v. Indigent Female Assn. II-427
St. Mary's Church v. Wallace III-205
Saint Paul Trust Co. v. Sargent III-566
Sale v. Thornberry I-159
Salisbury v. Aldrich I-11, 23, 66
v. Colt II-755. III-415, 418
Salmon v. Stuyvesant II-773
Salomon v. Heichel II-181, 232
v. Lawrence I-157
Salomons v. Hursheedt II-183
Saloy: Succession of II-913
Salter v. Blount III-570
v. Cain I-722. II-161
v. Neaville II-213
v. Salter II-215. III-471
v. Williamson III-656
Saltonstall v. Sanders II-302, 311, 316
Saltus: Matter of II-134, 360, 373
Sammis v. L'Engle III-581
v. Sammis II-478
Sample v. Barr III-176
v. Sample II-788
Sampson v. Brice II-684
v. Randall II-478, 700
v. Sampson II-898. III-207
v. Shaw III-285
Sams v. Sams II-888
Samson v. Samson I-674, 711
Samuel v. Samuel I-801
v. Thomas II-171
Sanborn v. Clough II-528
v. Goodhue III-361
Sanchez v. Hart II-23. III-472
Sanders: Matter of II-352, 353, 354
Sanders v. Blain II-153
v. Loy III-424
v. Sanders II-558, 782, 791
v. Simcich I-238. II-498
v. Soulter II-793
v. Stiles I-107, 129
Sanderson: Estate of III-355, 417
Sanderson v. Overman III-187
v. Pearson III-442
Sanderson v. Sanderson II-285, 799, 851. III-354, 363, 415, 418, 444, 446, 447, 574, 581
v. White II-300, 304, 322
Sandford v. Black II-829
v. Ellithorp I-179
v. Gilman I-642. II-707
v. Jackson II-779, 787
v. McCreedy II-22
v. Sanford I-794. III-566
v. Thompson III-136
Sanger v. Moody I-795
Sandoe's Appeal II-778
Sands v. Champlin II-558
v. Craft III-362
San Roman v. Watson I-574
Santa Clara Academy v. Sullivan II-270, 325, 585
Sargeant: Matter of II-827
Sargent: Estate of I-484, 539
Sargent v. Baldwin III-513
v. Cornish II-274
v. Kimball II-237, 238
v. Sargent II-50, 750, 753, 756
Sarkie: Appeal of I-708
Sarle v. Court of Probate II-575
Sarles v. Sarles II-795
Sarrazui: Succession of I-533, III-572
Sartor v. Beaty II-849, 850
Sarver v. Beal II-911
Sasscer v. Walker III-131, 474
v. Young II-102
Satterfield v. Mayes II-539
Satterwhite v. Carson I-594
Sauer v. Griffin III-205
Saunders: Appeal of I-66, 67
Saunders: Succession of III-578
Saunders v. Rudd II-241
v. Weston III-134
Saunderson v. Stearns I-479, 700
Savage: Matter of II-750
Savage v. Benham II-514, 535
v. Burnham I-800, 803. II-779
v. Gould I-704, 706. III-369
v. Merriman II-85
v. Winchester II-255
Savard v. Herbert III-590
Savings Bank v. McLean I-178
Sawtelli's Appeal III-186
Sawyer v. Baldwin II-502
v. Dozier I-329, 403
v. Grandy III-581
v. Hebard II-169
v. Sawyer I-4, 252, 256. II-868
v. Thayer I-312. III-562
Saxton: Estate of II-515, 534
Sayler v. Bates III-570
Sayles v. Baker II-649, 893, 898
Sayre v. Sayre I-532, 545. II-891
Sayward v. Sayward II-547, 565
Sbarboro: Estate of I-709, 712
Scanlan v. Wright I-13. II-424
Scarborough v. Watkins III-354
Schaedel v. Reibolt II-169
Schaeffer's Appeal II-799, 851
Schaeffer v. Schaeffer II-170
Schafer v. Eneu II-862
Schaffer v. Kettell II-341, 507
Scharb v. Holderbaum III-169
Schauck v. Schauck I-704
Schedel: Estate of II-363
Scheerer v. Scheerer III-580
Schenck v. Schenck I-575, 796, III-378, 393, 396
Scherer v. Ingerman III-169, 177
Schermerhorn v. Barheydt III-216
Schermerhorn v. Brewer III-173
v. Negus II-574, 575
Schieffelin v. Stewart III-417
Schiller: Succession of II-789
Schlarf v. Holderbaum II-864
Schley: Estate of I-484
Schley v. Collis II-438, 776. III-585
Schluter v. Bowery Savings Bank I-677, 700, 721
Schmidt v. Crafts III-476
v. Packard III-579
v. Willis III-189
Schmittler v. Simon III-314
Schmucker v. Reel I-158. II-317, 319, 329
Schneider: Estate of II-214
Schneider v. Manning I-11
Schnorr v. Schroeder III-194
Schnure's Appeal II-517
Schoenich v. Reed II-197. III-373, 440
Schofield: Estate of III-415
Schofield v. Walker I-56
Scholl v. Murroy III-561
Scholle v. Scholle I-805
Schoolfield v. Rudd I-643. III-137
Schoonmaker v. Roosa III-315
v. Van Wyck III-420
v. Wolford III-582
Schoppert v. Gillam II-539
Schott: Estate of II-709
Schouler: Matter of II-304, 307
Schrack: Estate of II-774
Schrichte v. Stites II-233. III-437
Schroeder: Estate of III-174, 584
Schroeder v. Superior Court I-611, 708
Schull v. Murray I-74, 78
Schult v. Moll II-431
Schultz's Appeal II-226, 328
Schultz v. Johnson III-282
v. Pulver II-181. III-134, 356
v. Schultz I-199, 207. 711
Schumacher v. Schmidt I-10
Schwab v. Pierro III-280
Schwartz's Appeal II-564, 576
Schwartz: Estate of II-51
Schwilke: Appeal of I-710
Scobee v. Bridges II-892, 895
Scoffin: Estate of II-675
Scofield: Estate of I-647
Scofield v. Adams II-672
v. Adriance I-647
v. Churchill I-638
v. Hustis I-638
v. St. John II-432, 595
Sconce v. Henderson III-589
Scott: Estate of II-193, 717
Scott v. Atchison II-135. III-362
v. Atwell III-566
v. Burch II-136, 138
v. Calvit I-674
v. Crews I-574, 575, 704. II-161
v. Dailey III-313
v. Farman I-396
v. Fox I-574
v. Guernsey II-382, 541
v. Key II-388
v. Logan II-521, 595
v. McCann III-582
v. Meadows III-183
v. Moore II-363
v. Morrison III-217
v. Mowell I-799
v. Nelson II-382
v. Patchin III-191, 199

Scott v. Price II-517, 519, 541, 565, 583
v. Searles II-187
v. Stebbins III-194, 571
v. Union II-314
v. Ware II-541. III-171, 177, 185, 204, 574
v. Wells III-172
v. West II-540
Scovell v. Fisher II-247
Scovil v. Scovil III-566
Scroggs v. Alexander II-349
v. Stevenson III-439, 440, 441
v. Tuft I-650. II-235
Scruggs v. Murray II-575
v. Stevenson II-646
Scudder v. Ames III-440
v. Van Arsdale I-800. II-381, 383
Seabrook v. Seabrook II-348, 385, 825
Seaburn v. Seaburn II-272
Seabury v. Bowen II-198
Seagrave's Appeal II-564, 578
Seaman's Friends Soc. v. Hopper I-40, 41, 42
Search: Appeal of I-118
Searing v. Searing II-73
Searles v. Brace III-189, 196
Sears v. Dillingham I-118, 326, 403
v. Giddey II-170
v. Hardy II-603
v. Mack II-849
v. Putnam II-517
v. Russell II-349
v. Schafer I-66
v. Sears I-87
Seaton v. Alcorn II-227
Seaver v. Lewis III-188, 195, 509
Seawell v. Buckley II-162. III-132
Seay v. Schue I-319
Sebastian v. Johnson III-179
Sebastien: Estate of I-800, 805, II-535
Second Congreg. Soc. v. First Soc. II-306, 427
Second National Bank v. Blauvelt II-212, 213
v. Williams I-898
Secor v. Pendleton III-475, 480
Security Co. v. Brinley II-646
v. Bryant II-670, 792
v. Hardenburgh II-547, 707
Security Ins. Co. v. Taylor III-515
Seddel v. Wills II-538
Sedgwick v. Ashburner II-152, III-515
v. Minot II-281, 385
Seegar v. State I-640
Seekamp v. Hammer II-912
Segar v. Lufkin III-581
Segwine v. Segwine I-11, 44, 59, 127
Seibels v. Whately II-374
Seibert's Appeal II-520, 757. III-185
Seip v. Drach III-312, 562
Seitz's Appeal II-483
Seitz: Matter of III-440
Selb v. Montague III-180
Selby v. Morgan II-555
Selden v. Keen II-588
Seligman: Estate of III-415
Seligman v. Rogers III-578
v. Ten Eyck III-578
Selleck: Matter of III-421
Selleck v. Rogers I-430
v. Rusco I-436
Seller's Appeal III-656
Seller: Estate of II-874
Seller v. Shore II-866
Selling: Matter of II-799
Selma: Estate of II-181
Selma &c. R. R. v. Lacy II-30
Sellman v. Milliken II-848
Selover v. Coe II-248. III-206, 207
Semmes v. Semmes I-201
v. Young II-245. III-374, 569, 577
Senat v. Findley II-246. III-183, 473
Senior v. Ackerman I-631, 703, II-23. III-132
Sermon v. Black III-175
Sessions v. Sessions II-452
Settegart v. Schrimpf I-14
Sever v. Russell III-657
Severance v. Hammatt II-212
Severn v. Yoran III-510
Severson v. Severson II-786
Sevier v. Brown II-575
v. Douglas II-361
Sewall v. Cargill II-306, 321
v. Patch II-161
v. Roberts II-886
v. Sparrow III-286
v. Wilmer I-244
Sewell v. Slingluff I-421, 852
v. Smith II-782
Seymour v. Beach III-579
v. Butler II-693, 753
Seymour, City of v. Cummins II-24
Shackelford v. Hall II-589
v. Miller II-792
v. Runyan I-576. II-113
Shafer v. Grimes II-26
v. Shafer II-873
Shaffers's Appeal III-354
Shaffer: Matter of I-120
Shaffer v. Corbett I-118
v. Matthews II-875
v. Shaffer II-760, 786, 790. III-413
Shaller v. Bumstead I-54
Shakespeare v. Fidelity Ins. &c. Co. III-134
Shale v. Mingo II-26
Shalter: Appeal of I-633
Shangles v. Runk III-562
Shannon v. Howell III-198, 571
v. Newton III-204
v. Pickell II-360
v. Shannon I-681
v. White II-866
Shapleigh v. Pillsbury II-306, 321
Sharkey: Estate of I-635
Sharkey v. McDermott III-283
Sharp: Estate of III-439
Sharp: Matter of III-316
Sharp v. Hall I-148, 151, 154
v. Kleinpeter II-384
v. Sharp I-543. III-176
v. Wallace I-142
Sharpe: Appeal of I-701
Sharpe: Estate of II-900
Sharpe v. Rockwood III-368
Sharpley v. Townsend I-800, 802
Sharpsteen v. Friedlander II-237
Sharpstein v. Tillon III-372
Shattuck v. Steadman II-346, 514, 534, 536
Shauffler v. Stoever I-713
Shaver v. McCarthy I-24
v. Shaver III-506
Shaw: Will of I-22, 23, 40, 42, 54
Shaw v. Barksdale III-200
v. Berry II-153
v. Chambers I-804
v. Cordis III-413
v. Hallihan I-299, 312
v. McBride III-215. 217
v. Moderwell I-708. II-194
v. Nicholay III-179
v. Paine III-378
v. Partridge II-74
v. Schoonover III-581
v. Shaw I-168, 179. II-785
Shaw v. Spencer II-137
Shawhan v. Loffer II-113
Shearer: Estate of I-485
Shearin v. Eaton III-571
Shearman v. Angel II-365
Shedd: Matter of II-876
Shedd v. Carey II-774, 778
Sheehan v. Kennelly III-652, 657
Sheeley v. Sheeley I-24
Sheerin v. Public Admt'r II-183. III-363
Sheet's Appeal II-354
Sheets v. Bray I-43
v. Grubbs II-360
Sheetz's Appeal II-194
Sheetz v. Kirtley III-422, 424
Sheffield v. Parker III-378
Shegogg v. Perkins I-445
Shelbley v. Hill II-134
Shelley v. Shelley I-11
Shelby v. Shelby II-462, 911
Sheldon v. Allen III-564
v. Bliss II-792, 872
v. Carpenter III-373
v. Chappele II-270
v. Purple II-558. III-203
v. Sheldon II-610
v. Warner II-248
Shell v. Boyd III-511
Shelmerdine v. Shelmerdine II-138
Shelton v. Carpenter II-135, 137, 252
v. Hadlock III-172
v. Homer II-154, 155
v. St. Clair II-254
Shenk v. Shenk III-192
Shepard v. Manhattan R. R. Co. II-53
v. National Bank II-234
v. Patterson III-364
v. Saltus III-361
v. Shepard II-373. III-438, 444
Shephard v. Clark II-757
v. Rhodes I-612, 676, 699
Shepherd v. McClain III-580
v. Nabors II-382
v. Young III-281
Sheppard v. Peabody Ins. Co. III-184
Sherburne v. Goodwin III-365
Sheridan v. Houghton I-456, 712
v. House II-537
v. Sheridan I-808
Sherley v. Sherley I-23, 413. II-241
Sherman v. Jerome II-760
v. Lanier III-365, 369
v. Lewis II-776
v. Newton II-791
v. Page I-290. III-134. 412
v. Paige II-182
v. Scott I-405
v. Sherman II-708, 868
v. Western Stage Co. II-29
v. Willet II-132
Sherrell v. Shepard II-135, 196, III-360
Sherrill v. Christ Church III-6
Sherrod v. Sherrod II-541
Sherwood v. American Bible Society II-270, 271, 320, 321, 323
v. Johnson II-212
v. Smith II-896
v. Thomasson II-865
Shethar v. Sherman II-438, 443
Shevalier v. Seager I-443
Shields: Estate of II-427
Shields v. Alsop II-235, 267
v. McDowell III-174
v. Odell I-638. II-627. III-133
v. Shields I-275, 704
v. Smith III-562
v. Sullivan II-195

Shillaber: Estate of I-141
Shillaber v. Wyman I-488
Shilton: Matter of I-276, 540
Shinkle v. Crock I-105
Shinn v. Motley II-343
Shipe's Appeal II-188
Shipman: Estate of I-625
Shipman: Matter of III-280
Shipman v. Butterfield I-483, 545
v. Fanshaw II-274
v. Furniss I-68
v. Keys II-792, 873
v. Rollins I-424. II-272
Shipp v. Gibbs II-534. III-167
Shipworth v. Lea I-793
Shirley v. Healds I-362, 364, 367, 368
v. Shattuck III-443
Shiver v. Brock II-891, 895, 899
v. Rousseau II-254
Shivers v. Goar II-586, 782
Shoalbred v. Drayton II-182
Shoemaker's Appeal II-480
Shoenberger: Estate of I-354
Shomo: Appeal of I-529, 533
Shortz v. Unangst I-796
Shotts v. Poe II-342
Shotwell v. Mott II-307, 322
v. Sedam II-782
Shown v. McMackin I-678
Shreve v. Joyce II-154. III-577
v. Shreve II-828. III-190, 219
v. Wampole I-694, 703, 706
Shriver v. Holderbaum III-577
v. Lynn II-563
v. State II-911. III-559
Shropshire v. Long III-377
v. Reno I-45
v. Withers I-531
Shrover v. Garrison III-563
Shuler v. Bull II-535
v. Millsaps II-26
Shull v. Johnson II-374
Shulters v. Johnson III-193
Shultz v. Pulver II-926
Shuman: Estate of II-910
Shumway v. Cooper I-530
v. Harmon I-800, 803
v. Holbrook I-381
Shupp v. Gaylor II-664. III-197
Shurbun v. Hooper II-251
Shurtleff v. Ferry III-357
v. Francis I-897
Shuttleworth v. Noyes II-75
v. Winter II-182. III-418
Sibbit v. Lloyd III-561
Sibbs v. Philadelphia Savings Fund Soc. I-576
Sibley v. Siminton III-208
Sichel v. Carillo II-233
Siddall v. Harrison I-356, III-654
Siddons v. Cockrell II-540
Sidener v. Howes III-177
Sidle v. Anderson III-315
Sifford v. Morrison I-633
Sigler v. Haywood III-584
v. Vaughan III-569
Sigourney: Estate of II-247
Sigourney v. Sibley I-350, 701
v. Wetherell II-626
Silberman: Estate of III-353
Silcox v. Harper II-304
v. Nelson II-826
Siler v. Dorsett I-139, 141
v. Gray III-282
Silknitter's Appeal II-478
Sill v. McKnight I-277
v. Sill II-194, 781
Silsby v. Bullock I-87
Silvers v. Worcester III-582
v. Canary II-517. III-208
Silvey, Matter of II-780
Siminton v. McLane I-305
Simmons: Estate of I-704
Simmons: Matter of I-126
Simmons v. Beazel II-461
v. Biggs III-182
v. Deury III-217
v. Gooding II-398
v. Heman II-102
v. Hubbard II-695
v. Priest II-52
v. Saul I-674
v. Simmons I-214. III-509
v. Tongue III-286
Simms v. Garrot II-827
v. Richardson II-239
Simon v. Albright III-657
v. Wildt I-151
Simonds v. Simonds II-560
Simons v. Bryce III-205
Simpkins v. Scudder II-751
Simpler v. Lord I-59, 164
Simpson's Appeal II-799, 850, 851
Simpson: Matter of I-255, 457, 458
Simpson Will of I-104, 105, 106
Simpson v. Cook I-564. II-152, III-424
v. Cureton II-866, 869
v. Jones I-698, 702
v. Kelso I-800
v. Simpson I-114. II-890, 891
v. Snyder III-352, 561
v. Welcome II-307
v. Young III-285
Sims v. Boynton I-677, 678. II-86
v. Gay II-568
v. Hodges I-429
v. Sims II-649, III-189, 217, 373
v. Smith II-518, 524, 546, 565
v. Stilwell III-315
v. Waters I-574
Singer: Matter of III-423. 424
Singer v. Benjamin III-578
Singerly: Estate of II-576
Singheimer: Matter of II-382. 633
Singleton v. Singleton I-843
Sink v. Sink II-792
Sinkler v. Sinkler II-829, 889, 893
Sinton v. Boyd II-589
Sip v. Lawback III-180
Siron v. Ruleman III-358
Sisk v. Almon III-473
Sisson v. Conger I-179
v. Seabury II-352
Sisters of Charity v. Kelly I-95, 97, 107, 108
Sisters of Visitation v. Glass I-427
Sistrunk v. Ware III-191
Siter v. McClanachan I-800
Sittle: Estate of I-54
Sivley v. Summers I-713. III-570
Sixty Seventh St.: Matter of III-204
Skeggs v. Horton I-457, 458
Skellenger v. Skellenger II-792
Skelly v. Veerkamp I-702
Skerrett: Estate of I-149, 151
Skerrett v. Burd I-239
Skidham v. Sims II-546
Skidmore v. Davis I-712
v. Roumaine III-207, 219
Skiles v. Houston III-476, 477, 563
Skillman: Matter of II-481
Skillman v. Skillman II-73. III-667
v. Van Pelt III-179, 205
Skinner v. Frierson I-721
v. Harrison II-275, 428
v. Skinner III-660
v. Wood I-798
v. Wynne II-892
Skipwith v. Cabell II-561
Slack v. Bird II-538
v. Emery III-217
v. Slack II-876
Slade v. Leonar III-579
v. Slade III-414
Slade v. Street I-692, 698
v. Washburn I-592
Slagg v. Jackson III-204
Slagle v. Entrekin II-112, 160
Slater v. Nason I-13
Slatter v. Carroll III-171
Slaughter v. Garland II-784
v. Stephens I-179, 191, 203
Slaymaker v. Bank of Gettysburg II-74
v. Farmer's Bank III-138
Slayton v. Singleton I-679
Sleeper v. Gould II-245
v. Kelley II-620
v. Union Ins. Co. II-23
Sleger v. Frizzell II-169
Slingerland: Matter of III-512
Sloan v. Frothingham I-429
v. Hanse II-500
v. Johnson II-113
v. Maxwell I-22, 410
v. Sloan I-430, 433
v. Webb II-867
Sloane v. Stevens I-253
Slocum v. English III-168
v. Grandin I-352
v. Sanford III-135
v. Slocum I-803, 806
Sloggy v. Dilworth III-287
Sloo v. Pool II-294
Slosson: Estate of III-441, 442
Slosson v. Lynch III-399
v. Naylor III-442
Small: Estate of II-113
Small v. Commonwealth I-629, 650
v. Small I-55, 62, 64
Smalley v. Smalley I-118
v. Trammell III-476
Smallman v. Powell II-911
Smart v. Easley II-773, 777, 782
v. King II-343
v. Waterhouse II-781
Smiley v. Bailey II-536
v. Gamblill I-174
v. Jones III-304
v. Smiley III-131, 413, 424
Smith: Appeal of I-331, 540. II-437, 440, 514, 537, 633. III-446
Smith: Estate of I-805. II-353, 481, 792. III-574, 666, 667
Smith: Ex parte III-585
Smith: Matter of I-405. II-162, 343. III-411, 578
Smith: Succession of I-535
Smith, J. B.: Will of I-23, 24, 25, 67, 129, 459
Smith v. Anderson I-739
v. Atherton III-190, 196
v. Axtell I-721
v. Ayer II-136, 138. III-318
v. Baldwin II-787
v. Baylis II-848, 849
v. Bayright III-184
v. Bell II-534
v. Blackwell II-294
v. Block II-539
v. Bone II-781, 782
v. Bonsall I-675
v. Boyer III-477
v. Brennan I-611
v. Britton II-102. III-373
v. Brown III-168, 174, 176, 177, 185
v. Bryant II-268. III-580
v. Burch II-472
v. Burnet III-580
v. Butler II-780, 789
v. Callaghan III-204
v. Carrere II-159, 160
v. Carroll III-199, 201, 313, 559
v. Chapman III-585
v. Chew II-139
v. Clark I-184. II-573
v. Clemson I-237
v. Collamer II-184. III-360
v. Combs II-214. III-370, 417

Smith v. Cornell III-187
v. Coup III-180, 187, 190
v. Crater II-239. III-221
v. Curtis II-822, 828
v. Davis II-196, 472
v. Dawnes II-251
v. Denman II-241, 242
v. Dolby I-103, 128, 184
v. Dorsey I-795
v. Dyer I-818
v. Edwards II-521, 825
v. Estes I-350
v. Everett I-650
v. Fellows II-242, 662
v. Fenner I-183
v. Ferguson II-27
v. Field II-755
v. First Presbyt. Ch. I-802, 806. II-322, 426. III-195
v. Folwell II-501
v. Furnish II-245, 783
v. Gaines II-273
v. Georgetown II-210
v. Gillam III-578
v. Gooch III-471
v. Grady II-245
v. Greer II-377
v. Gregory III-420
v. Grove II-27
v. Guild II-773, 775, 777
v. Hall III-568
v. Hard III-355, 357
v. Harrington II-348, 384
v. Harrison I-693
v. Harry I-637
v Hickenbottom 1-46
v. Hoy III-579
v. James I-12, 392, 402
v. Jewett II-468, 560, 565, 583
v. Jones I-264
v. Kearney I-806
v. Kelly II-888
v. Kennard III-417
v. King II-789
v. Kniskern II-787, 788
v. Lambert II-824. III-559, 572
v. Lampton II-443, 444, III-418
v. Lansing III-419
v. Lawrence III-657
v. McKitterick II-755
v. McLoughlin II-170
v. Marshall II-606
v. Martin II-432
v. Mason III-194
v. Mays III-286
v. Meakin III-175
v. Moore II-757
v. Murray II-619
v. Neilson I-674
v. Nelson II-272, 313
v. Olmstead I-243
v. Park III-167
v. Pattie III-574
v. Pendell II-541
v. Pettigrew III-395
v. Phillips I-625, 626
v. Pollard II-140
v. Remington III-571
v. Robertson I-244
v. Rockafellar II-546
v. Seaton III-174, 179, 208
v. Sherman II-26
v. Sinnott III-472
v. Smith I-712. II-52, 53, 211, 322, 360, 363, 424, 427, 443, 444, 612, 773, 791, 800, 873, 891, 893, III-177, 183, 203, 444, 563, 585, 666
v. Soper III-200
v. Starr I-801
v. Steele I-459
v. Stockbridge I-561
v. Thomas II-51
v. Thompson I-87
v. Thurman I-170
Smith v. Tiffany I-436. II-132 III-135
v. Union Bank II-926
v. Van Ostrand II-588, 700, III-471
v. Wait I-193, 199
v. Walker I-793, 794
v. Watkins II-268
v. Webb III-476
v. Wells III-172
v. Whiting II-153
v. Wilmington II-22
v. Wingo I-562
v. Wiseman II-528
v. Wood I-793
v. Wyckoff II-491
v. Yancey II-620
Smither v. Smither II-791
Smithers v. Hooper II-113
Smithwick v. Evans I-420
v. Jordan I-240
v. Kelly I-626
Smock v. Reichwine III-180
v. Smock I-184
Smyley: Matter of II-848
Smyley v. Reese II-170, 195 III-354
Smyth v. Caswell II-233
Snead v. Coleman III-315
Snedeker v. Warring I-867
Snedekers v. Alleine III-371
Sneed v. Ewing II-469
Snelgrove v. Snelgrove II-781, 889
Snell v. Dale II-232
v. Ferrell III-578
v. Snell III-372
Snider v. Croy II-28
v. Cutliff II-136
v. Snider II-646
Snoddy v. Snoddy II-360
Snodgrass v. Andrews II-182
v. Snodgrass I-638, 639. II-183
Snook v. Snook II-775, 786
Snover v. Squire I-801
Snow v. Collum III-216
v. Foley I-256
v. Snow II-515, 520, 912
Snowhill v. Snowhill I-806. II-73
Snyder: Estate of II-460. III-318
Snyder: Matter of III-376
Snyder v. Bull 1-119, 403, 404
v. Miller II-786
v. Sherman III-582
v. Snyder I-178. III-474
v. Warbasse II-618. III-195
Sohier v. Burr II-323
v. Eldridge II-50
v. Inches II-830
v. St. Paul's Church II-306
Sojourner v. Fourney III-369
Soldine v. Hyams III-131
Soley: Estate of III-394, 443
Solliday v. Bissey III-563
Solomon v. Tarver III-410
v. Wixon I-330
Solomons: Matter of III-412
Soltan v. Soltan I-87
Somers: Estate of II-874
Somers v. Johnson I-642
Sommerville v. Sommerville III-207, 375
Sorrelle v. Sorrelle II-618
Sorrels v. Trantham III-420, 421, 443, 660
Sorsby v. Vance I-9
Sorver v. Berndt II-363
v. Scholl III-283, 284
Soule: Matter of I-46
Sourin: Estate of III-446
South v. Hoy II-865
South Mahoning Tp. v. Marshall III-191
South &c. R. R. v. Sullivan II-32
Southall v. Taylor II-135. III-354
Southard v. Beaver III-510
v. Potts III-564
Southerland v. Southerland I-897
Southern &c. Co. v. Cleghorn II-214
Southwick v. Morrell III-171, 658
Southworth: Matter of II-912
Southworth v. Adams I-457
v. Parker III-221
Souzer v. De Meyer III-571, 659
Soverhill v. Suydam II-624
Soward v. Soward I-118, 127, 137
Sowell v. Sowell I-701
Sowers v. Cyrenius II-306, 322
Sowles v. First Nat'l Bank III-420, 571
Spalding v. Huntington I-417
Spangler: Estate of II-756
Spangler v. Dukes II-866
Sparhawk v. Buell I-630. III-396, 415, 571, 654
Spark's Appeal II-460
Sparks v. Weedon II-750
v. White III-137, 515
Sparrow: Succession of II-52. III-139, 320, 440, 444, 478
Sparrow v. Kelso III-187
Spaulding v. Cook III-377
v. Gibbons I-128
v. Suss II-246
v. Wakefield III-352, 376, 416
v. Warner III-563
v. Warren II-251
Speake v. United States I-197
Speakman: Estate of II-182
Spear v. Tinkham II-457. III-418
Speelman v. Culbertson II-132
Speer v. Speer I-709. II-785. III-473
Speidel's Appeal II-875
Speirs v. Wisner III-440, 441
Spence v. Parker III-171
v. Robins II-497, 710. III-198
Spencer's Appeal II-875
Spencer: Matter of II-750, 751, III-4
Spencer v. Jennings III-167
v. Negro Dennis II-563, 572
v. Popham I-796
v. Rutledge II-112, 113
Sperber v. Balster I-152, 351
Sperbs v. McCoun III-560
Sperry: Estate of III-138
Spier's Appeal II-871
Spilman v. Payne II-199, 214
Spillane v. Duryea III-194
Spire v. Lovell II-171
Spofford v. Pearsall II-373
v. Smith I-675
Spoon v. Smith III-511
Spoonemore v. Cables I-47, 145, 184
Spotts v. Hanley III-472
Spoulser's Appeal II-443, 604
Sprague: Matter of III-424
Sprague v. Luther I-108
Spraker v. Van Alstine II-560, III-217
Spratt v. Spratt I-11, 23, 25
Spraybury v. Culberson I-484
Spreen: Matter of III-510
Sprigg v. Weems II-462
Spring v. Parkman I-369, 680
Springer's Appeal II-890. III-192
Springer v. Arundel II-353
v. Congleton II-343, 507
Springfield v. Hurt III-171
Springs v. Irwin I-561, 700
Springsteen v. Samson II-171, 851
Sproul's Appeal II-751, 830, 850
Sproul: Succession of III-359
Spurgeon v. Robinet III-480

Spurlock v. Earles I-639. III-355
Squier v. Squier III-138, 440
Squire: Estate of I-245
Squires v. Old II-680
Staats v. Bergen III-419
Stableton v. Ellison II-354
Stack v. Royce III-167
Stackhouse v. Horton I-34, 41
v. Wheeler III-179, 180
Stacy v. Thrasher II-103. III-515
Stagg v. Beekman I-420
v. Green I-316, 363
v. Jackson I-802, 805, 806
v. Linnenfelser I-363
Stahl's Appeal II-587
Staigg v. Atkinson II-784
Stair v. N. Y. National Bank I-576
Stairley v. Rabe I-275
Stalling v. Foreman II-140
v. Stallings II-898, 900
Stallworth v. Farnham I-637
v. Stallworth II-912
Stambaugh v. Smith II-243
Stamps v. Bell II-244
Stancell v. Gay I-481
v. Kerran I-24
Standifer v. Hubbard II-245
Standley: Estate of II-399
Standfield: Matter of II-750, 753
Stanford v. Murphy III-581, 654
v. Stanford II-243
Stanley v. Brannon II-892
v. Noble III-169, 176, 177
Stannard v. Barnum II-472, 492, 825
Stans: Estate of II-865
Stanton: Matter of II-194
Stanton v. State I-641
v. Wetherwax I-40, 41
Stanwood v. Stanwood II-78
Staple's Appeal II-170
Starbuck v. Starbuck II-438, 440
Stark v. Hunton II-782, 785, 787, III-373, 576
v. Parker I-485
v. Smiley II-560, 562
Starke v. Wilson III-190, 578
Starkey v. Hammer III-177
Starkweather v. American Bible Soc. II-300, 313, 321, 827
Starling v. Price I-417. II-342, 507
Starr: Estate of II-754
Starr: Matter of III-442
Starr v. McEwan II-700
v. Starr II-480, 785
Starrs v. Mason I-117
Staser v. Hogan I-67, 424
State v. Adams III-357, 558, 571
v. Anderson II-28
v. Barrett I-652
v. Bartlett I-652
v. Berning I-635, 636. II-845, III-353, 446
v. Bidlingmaier I-539, 702
v. Blackwell III-572
v. Bowen II-254
v. Brown I-641, 649. II-160. III-374
v. Cheston III-364
v. Cloud I-652
v. Conover III-172, 174, 176
v. Crawford I-641
v. Crenshauer I-632, 642
v. Crossley I-211, 230. II-750
v. Cunningham III-285, 560
v. Dakota Co. Probate Court II-34
v. Dalrymple III-1, 2, 3
v. Dickson II-199
v. Dilley I-641, 651
v. Drake III-412
v. Drury I-635
v. Farmer I-574. II-160
State v. Felter I-410
v. Fields I-635
v. French I-637. II-180, 181, 182
v. Fulton II-159
v. Gardner I-410
v. Gerard II-300, 302
v. Gorman I-450
v. Green I-573, 574
v. Gregory I-628, 639, 648. II-182. III-356
v. Griffith II-285, 302, 315, 323
v. Grigsby I-648. III-571
v. Harris II-199
v. Hart II-160. III-411
v. Heinricks II-161
v. Hewlett I-640. III-654
v. Hichborn II-253
v. Hoover v. Berryhill I-651
v. Howarth I-636
v. Hunter II-159
v. James I-626, 651
v. Johnson II-212. III-364
v. Kendall I-380
v. King I-536
v. Lichtenberg II-870
v. Lindley I-653
v. McCarty III-657
v. McDonough II-275
v. McGlynn I-674. 677
v. McGovern II-302
v. Manchester &c. R. R. II-32
v. Martin I-637
v. Mason II-211
v. Mayhew III-413
v. Meagher III-363
v. Milner III-370
v. Murray II-102
v. Osborn I-638. III-135
v. Paul II-250
v. Porter I-649. II-160
v. Price I-633
v. Probate Court II-246. III-169, 182
v. Purdy I-535
v. Ranghley II-341
v. Reinhardt I-539, 702
v. Robinson II-472. III-178
v. Rogers I-287
v. Roth I-648. II-225
v. Rottaken I-536. II-159
v. Rucker I-703
v. Sanders III-471
v. Shelby I 647, 648
v. Smith I- 641, 649, 651. II-160, 316, 427
v. Stafford I-647
v. Steers II-872
v. Tittman II-235
v. Tubb I-640
v. Ueland II-779
v. Walter II-321
v. Warren II-321
v. Watson I-278
v. Williams I-713
v. Wilson III-422
v. Wiltbank II-320
v. Winter I-409
v. Wolff I-635
v. Wyant I-629
State Bank v. Ewing II-786
v. Tutt II-215
Staunton v. Packer I-323
Stayner's Case III-422
Stayner v. Bower II-891
Stearly's Appeal III-440
Stearn's Appeal III-443
Stearns: Matter of I-598
Stearns v. Brown III-414
v. Burnham I-362
v. Fiske I-531, 539, 702
v. Houghton I-793
v. Stearns II-865
v. Wright I-358, 359
Stebbins v. Field III-179
v. Hart I-45, 47, 51, 55, 63, 65
v. Lothrop I-546, 701
Stebman's Appeal III-446
Steckel's Appeal II-888
Stedfast v. Nicoll II-342
Stedman v. Fiedler III-317
v. Priest II-507
v. Shattuck II-344
Steel v. Holladay III-439, 443, 444
v. Steel I-818. III-566, 576
Steele: Estate of II-871
Steele v. Atkinson I-576. II-159
v. Clark III-589
v. Fisher II-782, 864
v. Frierson II-850, 892, 897, 900
v. Graves I-635
v. Levisay I-157
v. Morrison II-183
v. Price I-469
v. Renn I-674, 721
v. Steele II-791. III-170, 312
v. Tutwiler I-632
v. Ward I-405
Steen v. Bennett I-573
Steere v. Wood II-799
Stein v. Huesmann III-449
v. North I-9
v. Wilzinski I-69, 128
Steiner's Appeal II-751, 753, 756
Steinman v. Saunderson III-657
Stennett v. Hall II-497
Stephen v. Milnor II-709
v. Walker I-418, 425
Stephens v. Beal II-73
v. Cotterell III-477, 579
v. Gibbs II-782
v. Harris II-211
v. Howard II-729
v. James III-316
v. Meek I-642
v. Milnor II-506, 518, 662
v. Taylor I-636
Stephenson v. Ontario Orphan Asylum II-826 III-376
v. Oxson II- 694, 754, 757, 800
v. Short II-286, 288. III-507
v. Stephenson I-23, 494, 549
v. Yandle I-800
Sterling v. Sims II-73
Stern's Appeal III-317
Stern: Matter of III-318
Stetson v. Moulton I-642. II-850
Stevens : Matter of I-243
v. Cole I-650
v. Flower III-185, 193
v. Gage III-353
v. Gaylord I-429, 612. II-627, 926, 927. III-134
v. Goodell II-112, 159
v. Gregg III-217, 479
v. Haskell III-562
v. Hope I-227
v. McNamara I-546
v. Palmer II-848
v. Post III-654
v. Shippen II-385
v. Stevens I-43, 638, 644
v. Van Cleve I-24, 179
v. Warren III-509
v. Witter II-244. III-280
Stevenson: Matter of I-539
Stevenson v. Brown II-773, 791
v. Hart III-445
v. Lesley II-344, 347, 518, 519, 545
v. Martin II-891, 898
v. Murray III-177
v. Phillips III-434, 437
v. Polk I-518
v. Poole III-369
v. Schriver II-251
v. Superior Court I-678 680
v. Valentine I-315
v. Weisser II-212
v. Wilcox I-368
Steward v. Hinkel II-369
Stewart: Appeal of I-539. II-140, 184, 795, 845. III-367, 419

Stewart: Appellant I-273
Stewart: Estate of II-184
Stewart: Matter of II-585, 775, III-7
Stewart: Will of I-125
Stewart v. Barrow II-576
v. Brady II-576
v. Carr II-232
v. Chambers II-664, 672, 759
v. Comer III-396
v. Eden III-562
v. Elliott I-24, 55
v. Glenn II-849
v. Hamilton I-797, 799
v. Harriman I-118, 404
v. Lispenard I-18, 30, 46, 133, 410
v. McFarland III-578
v. Morrison I-648
v. Mulholland I-256
v. O'Donnell I-429, 431
v. Pattison II-900
v. Peters I-796
v. Phenice II-112, 159
v. Redditt I-410
v. Richey II-86, 252, III-474
v. Robinson III-319
v. Smiley II-51, III-473
v. Spedden I-410
v. Stewart I-886, II-75, 365, 399, 787, 867, III-581
v. Swain II-481
Stickney v. Hammond I-230
Stieff v. Collins II-620, 894
Stiers v. Stiers III-174
Stiger v. Bent III-186, 580
Stiles v. Smith II-235, III-574
Stilley v. Folger II-789
Stillman v. Young III-574
Stillwell v. Doughty II-50
v. Knapper II-558, 588
v. Melrose II-196, III-186
Stilwell v. Leavy III-199
Stimson v. Rogers II-53
v. Vroman II-663, 891, III-283
Stinde v. Goodrich II-497
Stires v. Stires III-172, 197, 218, 220
v. Van Rensselaer I-794, II-341, 360, 500, 507
Stirling v. Stirling I-129
v. Winter III-314
Stith v. Jones III-652
Stock v. Parker III-376
Stockdale v. Conway I-546
Stockton: Appeal of I-543
Stockton v. Ransom III-412
v. Turner II-578
Stoddard v. Cutcompt II-782, 791
Stokely v. Gorman II-428
Stokes v. Goodykoontz II-851
v. O'Fallon I-237
v. Stokes I-798
v. Tilly I-9, II-354
v. Van Wyck II-349
Stone: Succession of III-355
Stone v. Corcoran III-661
v. Gerrish III-280
v. Griffin II-323
v. Hurfood II-560, 565
v. Kaufman III-584
v. McEckron II-706
v. Massey II-545
v. Morgan III-422
v. Nicholson II-344
v. North II-478, 481
v. Pennock II-612, 617
v. Strong III-179
v. Todd II-234, III-207, 208
v. Union Savings Bank II-153
v. Vandermark II-784, 790
Stonebreaker v. Friar II-248
Stoner v. Devilbiss III-562, 577
Stonestreet v. Doyle II-272, 324
Stonner v. Zimmerman I-804
Stook's Appeal II-408
Stopford v. Chaworth II-361
Storer: Will of I-47
Storer v. Wheatley II-395
Storey's Appeal II-893
Storey: Estate of III-187
Storey: Will of I-55, 62, 116, 127, 129, 388, 674
Storm: Matter of III-395
Storm: Will of I-258, 266
Storring v. Borren II-773
Story v. Palmer III-371
Stose v. People II-159
Stott: Estate of III-417, 422
Stout v. Hart II-438, 440
v. McLeod II-926
v. Stout II-696, 755, 829, 830
Stoutenburgh v. Moore I-564
Stover's Appeal II-563, 566
Stover v. Kendall I-202
v. Stover II-160
Stow: Estate of I-704, 705, III-357
Stow v. Ward II-381
Stowe v. Bishop III-579
Stowell v. Drake I-794
v. Graves II-534
Strackelford v. Bankhead III-665
Strange v. Graham I-793, III-580
Stratton: Estate of III-424, 439, 444
Stratton v. McCandliss I-358, III-171
v. Physic. Medic. Inst. II-305, 314
Straub's Appeal II-705
Straub: Will of I-710
Strauss v. Post II-541
Straw v. Trustees II-306, 426
Strawn v. Strawn II-867
Streatfield v. Streatfield II-773
Streeter v. Paton II-50
Strever v. Feltman III-473
Stricker v. Groves I-95, 111, 114
Strickland: Estate of III-281
Strickland: Matter of II-251, III-418, 569
Strickland v. Bridges III-560
Stringfellow v. Montgomery III-580
Stroble: Estate of I-714
Strode v. Commonwealth III-4
Strodes v. Patten III-362
Strohecker v. Grant III-562
Strong: Matter of III-2
Strong v. Bass II-619, 621
v. Perkins I-362, 369
v. Smith II-373, 732
v. Taylor School Township I-650, III-513
v. White II-469
v. Wilkson III-354
v. Williams II-612
Strother v. Mitchell II-643
Stroud v. Bailey II-588
v. Barnett III-208
Stuard: Estate of III-186
Stuart v. Carr II-243
v. Carson III-216
v. Commonwealth III-478
v. Kissam II-800, III-217
v. Spaulding II-534
v. Stuart II-349, 406
Stubblefield v. McRaven II-159
Stubbs v. Houston I-240, 410
v. Stubbs II-353, 480
Stuck v. Mackey I-801, 805
Stuckey v. Bellah III-583
Stuckley v. Stuckley II-461
Studley v. Willis II-169
Stull v. Davidson II-237
Stump v. Findlay II-382
Stumpf's Appeal III-283
Stunz v. Stunz II-785, 789, 793
Sturdivant v. Birchell I-132
v. Davis I-304
Sturges v. Ewing II-785
Stuyvesant v. Hall II-153
Suarez: Matter of I-713
Suarez v. Mayor III-134
Suckley: Matter of II-912
Sugar River Bank v. Fairbank III-660
Suggs v. Supp II-677
Sullings v. Richmond II-863
Sullivan: Estate of I-629
Sullivan: Re I-149
Sullivan v. Fosdick I-563, 676
v. Holker III-479
v. Horner II-169, 170
v. Kieffer II-793
v. Latimer III-172
v. Lawler III-470, 656, 659
v. McMillan II-152
v. Mara II-785
v. Rabb I-674, 676
v. Remington II-101
v. Roland III-507
v. Sullivan II-277, 278
v. Tioga R. R. I-628, II-32
v. Winthrop II-692, 751
Sully v. Nebergall II-788
Summer v. Society II-676
v. Summer I-184
Summerfield v. Gilbert II-868
Summerhill v. Hanner III-284
Summers v. Reynolds III-364
Summerville v. Holliday III-571
Summit v. Yount II-588
Sumner v. Williams III-320
Sumwalt v. Sumwalt I-448, 449
Sunderland: Estate of II-913
Sunderland v. Hood I-65, 69
Surber v. Kent III-359
Surgiver v. Paddock II-25
Susy v. Forst I-708
Suter v. Hilliard II-318
Sutherland v. Brush II-152, III-394
v. Clark III-189
v. Harrison III-187
v. Hawkins I-409, 694
Sutliff v. Forgey I-12, II-273
Sutphen v. Ellis III-355
Sutter v. Ling III-139
Suttle v. Turner I-562
Sutton v. Cole II-274, 307, 322
v. Craddock II-707
v. Sadler I-413
v. Sutton I-62, 411, II-913
v. Weeks I-631
v. West II-516, 524, 528
Suydam v. Bastedo III-397
Swails v. Swails I-243, II-648
Swain: Estate of II-237, 241, 245, 247
Swain v. Baldwin II-25
Swallow v. Swallow II-371
Swan v. Goodwin I-401
v. Hammond I-237, 238, 245
v. House II-251
Swann v. Garrett II-760, 776, 778
Swasey v. American Bible Soc. II-302, 305, 321, 322, 674, 675
v. Ames III-581
Swatzwalter's Accounts III-446
Swayze v. Wade II-871
Swazey v. Jaques II-398
v. Little III-208
Swearingen v. Pendleton III-134
Sweedes: Estate of I-800
Sweeney v. Muldoon I-364, II-171
v. Sweeney III-571
v. Warren I-798, 802, III-203
Sweeny v. Sampson II-305
Sweet v. Chase II-516
v. Dutton II-381
v. Parker III-580

Sweet v. Sweet I-194
Sweezey v. Willis II-911
Sweezy v. Thayer III-184
Swelgert v. Berks II-50
Sweitzer: Estate of II-476
Swenarton v. Hancock I-54
Swett v. Boardman I-126
Swift's Appeal III-372
Swift: Matter of III-2
Swift v. Beneficial Soc. II-303
v. Duffield I-272. II-342
Swift v. Edson I-243
v. Martin I-299
v. Mills III-374
v. San Francisco Stock Board III-132
v. Wiley I-120
Swindall v. Swindall III-417
Swink v. Snodgrass II-112
Swinton v. Egleston II-826
Swinton v. Legare II-539
Switzer v. Kee III-281
Swoop's Appeal II-648
Swoop v. Chambers III-378
Sword v. Adams I-419. II-500
Swyney v. Swyney I-152
Sydnor v. Palmer II-362
Syme v. Badger II-776. III-352, 353, 357, 377
v. Riddle III-176, 513
v. Smith II-25
Symmes v. Strong II-124

T.

Tabb v. Collier II-869
Tabler v. Tabler I-171
Tabor v. McIntire I-149
Tacke: Matter of II-194
Taft v. Morse II-559. III-199
v. Stevens I-818
v. Taft II-390, 547
Taggard v. Piper II-694
Taggart's Appeal II-790
Taggart: Petition of I-277, 334
Taggart v. Boldin I-417
v. Murray II-534
Tainter v. Clark I-324, 336. II-154, 162, 300, 305
Talliaferro v. Day III-202
Tallman v. Tallman I-417, 422, 424, 425
Tallon v. Tallon I-575
Talmage v. Chapel II-102. III-479
Taney: Estate of I-114
Tanner v. Bennett III-361
v. Livingston II-536
v. Mills I-653
Tappan's Appeal II-274, 302, 311, 321, 564, 566
Tappan v. Deblois I-9. II-300, 306
v. Methodist Episcopal Church II-249. III-666
v. Tappan I-364, 626, 628, 632, III-470, 471, 558
Tappen v. Davidson I-144, 147
Tarbell v. Jewett II-22, 113, 625, III-356
v. Parker III-175
Tarbox v. Fisher II-869
Tarrant v. Ware I-120, 389
Tarver v. Tarver I-675, 692
v. Torrance III-363
Tate v. Norton III-353
v. Tate III-581
Tatum v. McLellan II-301
Taut v. Wigfall I-677
Taveau v. Ball II-135, 586. III-416
Tawney v. Long I-34
Tayloe v. Bush III-422
v. Gould II-353, 520, 539
v. Johnson II-579
v. Mosher II-536
v. Tayloe II-138
Taylor: Appeal of I-168. III-167
Taylor: Estate of I-22. II-235, 244, 490. III-175, 176, 357
Taylor v. Barron I-338, 586. III-136
v. Benham I-805. II-113,
v. Biddle I-704
v. Bond II-344
v. Brodhead I-134, 146
v. Brooks I-575
v. Bryn Mawr Coll. II-270, 304
v. Bunker III-578
v. Conner II-502
v. Cresswell I-12, 22, 23
v. Delancy I-532
Taylor v. Elder II-483
v. Gilette I-712
v. Hanford III-175, 176
v. Hargrave II-25, 783
v. Harwell III-198
v. Johnson II-564
v. Keep II 311
v. Kelly I-41
v. Lanier II-606
v. Lucas II-826
v. McArthur I-640, 653
v. McGill III-576
v. Mason II-564, 583
v. Minton II-152
v. Moore I-298, 306
v. Mosher II-344
v. Mygatt III-312, 318
v. Penna. Co. II-29
v. Reese II-890
v. Robinson III-352
v. Savage I-721
v. Shuit III-393, 397
v. Smiley I-289
v. Sutton II-565
v. Taylor I-67, 117, 118. II-390, 899. III-282, 285
v. Tibbatts I-331, 333, 675
v. Tolen II-424, 560, 633. III-196
v. Volk II-254. III-585
v. Watson II-406
v. Wendel II-510, 561, 830
v. Wilburn I-64
v. Woburn I-363
v. Wright III-443
Taylor &c.R.R. Co. v. Warner II-31
Tazwell v. Smith I-801, 802
Teacle: Estate of I-87
Teague v. Corbitt I-650. II-195, III-178, 574, 655, 658
v. Downs I-886
v. Teague II-884, 620
Tebbetts v. Tilton I-676, II-240
Tebbs v. Duval II-360
Teed v. Morton II-344, 508
Teel v. Winston II-239
Tefft v. Tillinghast II-468
Tehan v. Maloy III-396
Telfer v. Northern R. R. Co. II-33
Telford v. Boggs II-875
Tell City Furniture Co. v. Stiles II-133. III-354
Temple v. Mead I-159
v. Taylor I-410
Temples v. Cain I-484
Templeton v. Falls I-386
Tenbrook v. McColm I-712
Teney v. Laing III-131
Ten Eyck v. Rusk II-24
v. Vanderpoel III-315
Tennison v. Tennison II-73
Tenny v. Lasley II-237, 245
v. Poor III-177, 472
Terhune v. Bray II-28. III-287
Terhune v. Oldis III-563
v. White II-232, 237
Terpening v. Skinner I-268
Terrell v. Rowland II-248
Terrill v. Public Admr. II-534
Terry's Appeal II-875
Terry v. Briggs II-382
v. Bronson II-74, 374
v. Buffington I-23
v. Dayton II-242, 892
v. Edminster I-242
v. Smith II-462
Teschmacher v. Thompson I-703
Tessier v. Wyse III-217
Tevis v. Tevis II-243
Texas &c. R. R. v. Bledsoe II-31
Texas & Pacific R. R. v. Hall II-31
v. Robertson II-31
Teyn: Matter of II-196, 867
Thackeray v. The Farmer I-172
Thatcher v. Densmore III-314
Thaw v. Ritchie II-537, 541
Thayer v. Boston II-425
v. Clark II-225
v. Finnegan III-191, 201
v. Hollis III-360
v. Horner I-277
v. Keyes I-653
v. Spear II-568
v. Wellington I-141. II-827, 825
v. Winchester III-170
Theller v. Such I-449
Thelusson v. Smith II-214
Theolog. Educational Soc. v. Attorney-General II-315
Theurer v. Brogan III-473
Thiebaud v. Sebastian II-926
Thistlewaite v. Thistlewaite III-579
Thomas: Appeal of I-529
Thomas: Estate of II-874
Thomas v. Anderson II-515, 534
v. Capps II-648
v. Chamberlain II-268
v. Ellmaker II-300, 307
v. Folwell I-76
v. Gage II-899
v. Kelly II-569
v. Knighton I-546, 702
v. Levering II-398
v. Lines I-428
v. Morrisett I-681 II-288, 289
v. N. Y. Life Insurance I-299
v. Northcross II-559
v. People I-378
v. Record II-565. III-193
v. Riegel II-225
v. Scruggs III-395
v. Stevens II-424
v. Stump I-45, 62
v. Thomas II-244, 535, 653, 864. III-188, 217, 219
v. White II-352
v. Wood I-296, 800. II-782
Thomasson v. Driskell II-28

Thompson's Appeal II-480, 646, 739
Thompson: Estate of I-271, 442, 443
Thompson: Matter of I-36, 39, 271, 633. II-610, 663. III-445
Thompson v. Beadles I-674
v. Boswell III-177
v. Branch II-243
v. Brown II-211. III-207 317, 653, 659
v. Canterbury III-315
v. Carmichael II-774, 889
v. Churchill I-256
v. Devitte I-63, 65, 120
v. Egbert II-782
v. Gant II-583
v. Hawke II-239
v. Hook II-782
v. Hucket I-271
v. Ish I-62, 68, 424
v. Johnson III-285. 560
v. Knight I-713
v. Kyner I-23, 45, 51
v. Ludington II-539
v. McDonald II-364
v. McGaw II-782. III-422
v. McKisick I-158
v. Meek I-561. 562
v. Mott II-153
v. Norris II-300
v. People I-678
v. Peter III-576
v. Quimby I-140
v. Ray III-581
v. Samson I-721
v. Sanders III-414
v. Schenck I-798
v. Schmidt II-680, 682
v. Scott I-5, 94
v. Stevens I-125. III-280
v. Swoope II-270, 271. 321
v. Thomas II-844
v. Thompson I-843. II-134, 183, 517, 871, 873. III-188, 355
v. Tracy I-593, 713
v. White III-137
v. Whitmarsh II-85. III-474, 477
v. Winnebago Co. III-131
v. Young II-411
Thomson's Appeal II-482
Thomson: Estate of II-846
Thomson v. Ludington II-360
v. Smith III-313
v. Taylor II-211, 213
v. Thomson II-181, 183, 184
v. White III-282
Thorn v. Coles II-827
v. Gainer II-756
v. State III-584
v. Sutherland I-868
v. Watson II-234
Thornal v. Force II-732
Thorne v. Underhill II-184
Thornton v. Burch I-843
v. Mehring I-817
v. Moore I-850
v. Park I-649
v. Roberts II-539
v. Smiley III-473
v. Thornton I-388. II-875
v. Winston I-331, 334, 581, 532
Thorp v. Johnson II-560
v. Munro III-193
Thrall v. Thrall I-543
Thrasher v. Ingram II-534, 535, 680
Threadgill v. Ingram II-342
Throop v. Williams II-534
Thurber v. Chambers II-739. III-201
Thurston v. Doane III-131, 561
v. Holbrook II-240
v. Lowder III-131, 561, 567, 575
Thweatt v. Redd I-417. II-826
Thyng v. Moses II-824
Tibbin: Estate of II-874
Tichenor v. Hayes II-27
v. Tichenor II-52. III-133, 394, 395, 580
Tickel v. Quinn I-802. II-670
Ticknor: Estate of II-270. 272
Tienken: Matter of II-347
Tier v. Pennell II-360, 388
Tiernan v. Binns II 875
v. Rowland II-775, 778, 782
Tierney v. Corbett III 511
Tifft v. Porter II-143
Tift v. Collier II-852
Tighe v. Nelson II-460
Tigner v. McGehee III-201
Tilden: Estate of III-423
Tilden: Matter of III-437, 438, 440
Tilden v. Green II-320
v. Tilden I-120, 129. II-564, 566
Tilford: Matter of II-664, 839
Tilghman v. Stewart I-113
Tilley v. Bivins III-208
v. King II-563. 566
Tillinghast v. Andrews II-539
v. Cook II-349, 350. 534
v. D'Wolf II-360
v. Wheaton I-898
Tillman v. Bowman II-250
v. Davis I-803. II-380
v. Sullivan II-380, 541, 822
v. Walkup I-722
Tillotson v. Race I-420
Tillson v. Small II-847, 848
Tilson v. Davis III-573
Tilton v. American Bible Soc. II-427
Timberlake v. Harris II-382
v. Parish I-417. II-786
Timms v. Garrot II-380
Timon v. Claffy I-184, 457
Tindal v. Jones II-234, 242
Tindall v. Tindall II-462, 826
Tiner v. Christian III-446
Tinkham v. Smith II-849, 850
Tinnen v. Mebane III-572
Tipple: Matter of II-872
Tipton v. Tipton II-363
Tisdale v. Connecticut Life Insurance Co. I-678
v. Mitchell II-361
Titlow v. Titlow I-69
Titterington v. Hooker II-234, 235, III-207, 219
Tittman v. Edwards I-535, 709
v. Thornton III-475
Titus v. Poole III-568
v. Titus II-661, 672
v. Weeks II-534
Tobelman v. Hilderbrant II-184
Tobey v. Miller I-317. 320
Tobias v. Ketchum II-785
Tobin: Estate of II-285
Tobin: Matter of II-866, 873
Todd: Will of I-231, 282
Todd v. Fenton I-66, 425, 427
v. Renwick I-456. 457
v. Trott II-507
v. Willis II-159
v. Wright I-593
Todhunter v. Stewart I-532
Toebbe v. Williams I-148, 184
Toering v. Lamp III-477
Tole v. Hardy I-419. II-678. III-190, 191
Toler v. Landon II-717
Tolson v. Tolson II-405
Tome: Appeal of I-722
Tomkins v. Tomkins I-30, 133, 163, 164
Tomlin v. Jayne II-777, 778, 781
Tomlinson: Estate of I-159, 161
Tomlinson v. Bury II-438. 442, 476. 661
v. Nickell II-360
Tompkins v. Elliott II-562
v. Meeker III-317
Tompkins v. Tompkins I-675. III-357, 359, 394, 438
Toms v. Williams II-514, 517
Toner v. Collins II-587
Toney v. Shaw II-534
v. Spragins III-197
Tongue v. Nutwell II-496, 827
Tonnele: Will of I-160
Tonnele v. Hall I-95, 140
Tooke v. Hardeman II-779. 781
Tooker v. Bell I-611
Toole v. Perry II-352
Toomes: Estate of I-21, 106, 114, 126. 410
Toomey: Estate of III-579
Topping: Estate of III-168, 174
Topping: Matter of III-168, 174, 176
Toronto General Trust Co. v. Chicago, etc. Railroad Co. III-370
Torrance v. Torrance II-496
Torrence v. Davidson III-354, 355
Torrey v. Blair I-23, 33
v. Pond II-898
v. Shaw II-344
Torry v. Bowen I-124
Tosh v. Robert III-359
Totheree v. Lawrence I-673
Touzanne: Succession of III-446
Tower's Appropriation II-559
Towle v. Swasey II-440, 669. III-188
v. Towle II-610
Towne v. Ammidown I-630, 639, III-396
v. Weston I-220. II-830
Towner v. Tooley III-558
Townes v. Durbin II-926
v. Ferguson III-577
Townly v. Long I-63
Townsend's Appeal II-754
Townsend: Matter of II-643
Townsend: Succession of I-535, II-913
Townsend v. Bogart I-18, 24
v. Gordon I-484, 545
v. New York Life Insurance Co. II-241
v. Pell I-699
v. Radcliffe I-530. II-399, 856
v. Townsend I-544, 692. II-383, 438. III-193. 422
v. U. S. Trust Co. II-480
v. Whitney I-643
Townshend v. Townshend I-26, 34, 41
Trabue v. Harris II-241. 242
Tracy v. Card II-160
v. Frost II-172
v. Murray II-791
v. Slingerland III-512
v. Story II-49
v. Suydam III-362
Trafford v. Wilkinson III-470, 471
Trahern v. Colburn III-581
Trammel v. Philleo II-135, 226, III-358, 438, 439
Trammell v. Johnston II-574
Transue v. Brown I-411
Trask v. Annett I-633
v. Donaghue II-86
Traud v. Magnes III-208
Traver v. Schell II-545
v. Traver I-232
Travers v. Boykin III-561
Travis v. Morrison II-520
Traweek v. Kelly III-576
Trawick v. Davis I-151, 354, 673
Traylor: Estate of II-492
Traylor v. Cadanne III-284
v. Marshall II-133
Treadwell v. Brooks III-361
v. Cordis I-824. II-155, 862, 663, III-509

Treadwell v. Lennig III-579
Treat's Appeal II-304, 315, 322
Treat v. Fortune II-267. III-569
Trecothick v. Austin II-182. III-137, 476, 660
Tremper v. Barton II-650. 892
v. Conklin I-793
Treno: Estate of III-176
Trescott v. Trescott III-375
Tribble v. Broaddus II-114
Trimble v. Dzieduzylki I-443, III-136
v. James I-675. II-52. III-656
v. Marshall II-247. III-574, 575
v. Pollock III-183
Trimmier v. Thomson III-470, 560, 584
Tripp v. Talbird II-800
Trippe v. Frazier I-806. II-317, 496
Trost v. Dingler I-55
Trott v. West III-577
Trotter v. Trotter I-248. III-374
Trough: Estate of I-897
Troup v. Rice III-367, 417, 658
v. Smith III-287
Trow v. Shannon I-334
Troy v. Stanton III-560
Trueman v. Tilden III-313
Trumble v. Williams I-576, 714
Trumbull v. Gibbons I-22, 34, 41, 58, 68
Trust v. Harned II-212, 213
Trust Co. v. Bixby III-364, 415
v. Pratt I-650
Trustees v. Beatty II-306
v. Eagle Bank II-306
v. Kellogg II-304
v. Peaslee I-424, 425. II-304, 427
v. Wilkinson II-313
Trustees of the Unitarian Soc. in Harvard v. Tufts II-442
Trustees Orphan School v. Fleming III-206
Tuck v. Nelson III-579
v. Walker III-510, 512
Tucker v. Ball II-585
v. Bishop II-341, 344, 518
v. Condy II-926, 927. III-136
v. Henderson II-872
v. McDermott III-417
v. Oxmer I-120
v. People I-647
v. Seaman's Aid Society I-417, 424, 425. II-308, 321, 322, 428
v. Stites II-539
v. Tucker I-403. II-197, 827, III-370, 438
v. Wells II-239
v. Whaley I-488
v. Whitehead I-162, 387, 674, 675
v. Williams I-304
v. Yell II-211, 212
Tudor v. Terrel I-422, 424
v. Tudor I-194
Tuers v. Brunges I-564
Tuggle v. Gilbert III-355
Tugwell v. Tugwell I-795
Tulane: Matter of III-4
Tully v. Fitchburg R. R. II-29
Tunison: Matter of I-62
Tunnell v. Burton I-651. II-848
Tunstall v. Pollard III-137
v. Withers I-535
Tuohy v. Martin III-190, 199
Turk: Ex-parte II-536
Turnell: Succession of III-439, 448
Turner's Appeal II-648
Turner; Ex parte I-169
Turner: Matter of I-242
Turner v. Brown I-897
v. Cheesman I-22, 45, 51, 63, 410
v. Cook I-22, 120
v. Cross II-31
Turner v. Davis III-130
v. Debell III-479
v. Ellis II-182
v. Gates III-584
v. Gibb III-193, 196
v. Hallowell Sav. Inst. II-574
v. Ivie II-360
v. Kelly II-899. III-183
v. Linam I-429
v. Lyman III-508
v. McDonald I-355, 468, 673
v. Malone I-583
v. Patterson II-352
v. Riser I-612
v. Tapscott II-196
v. Turner II-873. III-192, 201
v. Wilkins I-573. II-161
v. Withers II-360
Turpin v. Chesterfield Coal etc., Co. III-361
v. Turpin II-643. 889
Tutt: Estate of III-435
Tuttle v. Robinson I-867. II-171, 267. III-221, 353
Twaddell: Estate of I-806. III-440
Tweedy v. Bennett II-172
Twendle v. De Bouchel III-576
Twistman v. Croushore III-579
Twitty v. Camp II-576
v. Houser I-639. III-363
v. Martin II-506. 539
Tyler v. Gardiner I-58, 60, 64, 68, 164
v. Tyler I-288
v. Whitney II-103
Tynan v. Paschal I-179, 193
Tyock: Estate of I-531
Tyrrell v. Morris II-183
Tyson v. Blake II-694
v. State III-1
v. Tyson I-63
v. Walston III-320

U.

Uhlhorn v. Goodman III-579
Uldrick v. Simpson I-331
Underhill: Will of II-276
Underhill v. Fleet II-411
v. Newburger II-197. 242, 247, III-421, 448
v. Saratoga R. R. II-562, 564
Underwood v. Curtis I-803
v. Underwood III-168. 180
Union Bank v. Smith III-364
Union Baptist Soc. v. Candia II-305
Union Method &c. Ch. v. Wilkinson III-195
Union Mutual Life Ins Co. v. Stevens III-132
Union National Bank v. Hicks III-477
v. Poulson I-713. II-254, III-585
Union Pacific Railway Co. v. Dundon I-354
United States v. Arredondo II-571
United States v. Cutts III-137
v. Daniel III-287
v. Duncan II-213, 214, 781, 787
v. Eggleston II-213, 214. III-132
v. Fisher II-213. 214
v. Fox II-274
v. Hooe II-214
v. Houston III-569
v. Hunter II-214
v. May I-640
v. Parker III-189, 378
v. Walker I-576. II-159
v. Wyman III-135
United States Bank v. Burke III-178
United States Trust Co. v. Bixby III-444
v. Tobias II-388
University Appeal II-498, 668, 675
University v. Hughes I-576. II-112
University v. Tucker II-270, 427
University of Vermont v. Baxter III-283, 557
Unruhe: Estate of III-318
Upchurch v. Northsworthy II-678
v. Upchurch I-108, 129
Upham v. Emerson II-506, 774
Upper Appomatox Co. v. Harding II-24, 101
Upshaw v. Stresly II-432
v. Upshaw II-780
Upstone v. People I-409
Urban: Estate of III-182
Ureg v. Ureg I-235, 250. II-561
Urich's Appeal II-382
Urich v. Merkel II-574
Urmey v. Wooden II-302, 322
Urquhart v. Oliver I-86
Ury v. Bush II-246
Usry v. Suit III-475
Utica Ins. Co. v. Lynch III-417
Utley v. Titcomb II-604
Utterback v. Cooper II-627
Utz: Estate of I-242. II-352, 353

V.

Vaden v. Hance II-382, 894
Vail v. Givan I-711
v. Rinehart III-179
v. Vail I-800, 804. II-827
Valcourt v. Sessions I-643
Valence v. Bausch II-855
Valencia v. Bernal I-299
Valentine v. Belden II-189
v. Borden II-518. 534
v. Farrington II-250
v. Jackson II-86. 87
v. Norton II-27
Valentine v. Nysor III-316
v. Ruste II-756
v. Valentine II-170. III-390, 368, 441, 443
Van v. Sanders III-576
Van Alst v. Hunter I-25, 47, 48

Van Amee v. Jackson I-157
Van Arsdale v. Van Arsdale II-787, 788
Vanauken: Matter of I-408
Van Axte v. Fisher II-534
Vanbibber v. Julian III-422
Van Bibber v. Reese III-200
Van Blarcom v. Dager II-480, 696, 756
Van Bokkelen v. Cook III-134, 652
Van Bramer v. Hoffman II-757
Van Buren v. Dash II-506
Van Camp v. Fowler II-536
Vance: Estate of II-795
Vance: Succession of II-272, 312, 314, 560
Vance v. Anderson I-681
v. Campbell II-588
v. Crawford II-773
v. Huling II-889
v. Nogh II-73
v. Sanders III-175
v. Upson I-711
Van Cleve v. Van Fossen II-912
Van Cortland v. Kip I-249 II-827, 828, 829
v. Laidley II-273, 350
Vandegrift v. Abbott II-51
Vandergrift's Appeal II-751
Vanderheyden v. Crandall II-534
v. Vanderheyden III-416
Vanderhoof v. Lane III-194
Van Dermoon: Matter of II-23. III-138
Vanderpool v. Davenport II-824
v. Van Valkenburg I-676
Vanderveer v. McKane II-287, 288
v. Ware III-312
Vandervoort: Matter of I-808, 806
Vandervort: Estate of II-566
Vandever v. Freeman II-236
Vandewalker v. Rollins II-541, 805, 822
Vandigrift v. Potts II-869
Van Dusen: Appeal of I-707, 711. II-707
Van Duyne v. Van Duyne I-157. II-773
Van Duzer: Matter of I-796, II-214. III-138
Van Dyck v. Van Beuren I-156
Van Dyke: Matter of II-846
Van Dyke v. Vanderpool II-534
Vandyke v. Vandyke I-429. III-472
Vanell v. Wendell II-395
Van Emon v. Superior Court II-171
Van Fleet v. Stout III-582
v. Van Fleet III-182, 281, 578
Van Giessen v. Bridgford I-484, 561, 806. III-191
v. Howard II-344, 360, 373, 585
Van Gorder v. Smith I-156
Van Guilder v. Justice II-792
Van Guysling v. Van Kuren I-24
Van Hanswyck v. Wiese I-59
Van Hoffman v. Ward I-125, 126
Van Hoose v. Bush II-135. III-358, 359
Van Horn v. Teasdale III-355
Van Houten v. Post II-642. III-376
Van Kleeck: Matter of III-6
Van Kleeck v. Dutch Ch. II-827, 828
v. Phipps I-57, 58, 59, 63, 68, 104, 413
Vanmater v. Love III-208
Van Mater v. Sickler III-562, 656, 658
Van Meter v. Jones II-181. III-656
Van Middlesworth v. Van Middlesworth II-760
Vann v. Newsom III-572
v. Vann III-314, 320
Van Ness v. Jacobus I-805
Van Nest v. Van Nest II-661
Vannorsdall v. Vandeventer II-382
Van Orden v. Van Orden II-782
Van Ostrand v. Moore I-269
Van Pelt v. Van Pelt I-415
Vanpelt v. Veghte II-183. III-393
Van Rensse v. Platner II-50
Van Rensselaer v. Dunkin II-478
v. Van Rensselaer III-198, 428, 654
Van Riper v. Van Riper II-609, 612
Vansant v. Boileau I-403, 404
Van Saum v. Farley II-248
Van Schmidt v. Bourn II-134
Van Steenwyk v. Washburn II-779, 786
Van Tilburg v. Hollinshead I-264, 341, 588
Vantine v. Morse II-439, 739, III-559
Vanvalkenberg v. Vanvalkenberg I-58, 425
VanVechten v. Keator III-189
v. Pearson II-344, 536
v. VanVechten III-582
VanVeghten v. VanVeghten I-800, 802
VanVleck v. Lounsbury III-420
VanVliet's Appeal III-191, 194
VanVoorhis v. Brintnall II-865, 889
VanWinkle v. Blackford III-577
v. Fowler I-797
v. Schoomaker I-72
v. Van Howten I-419. III-189, 193, 195
VanWyck v. Bloodgood II-518, 536
v. VanWyck I-626
Vanzant v. Bigham II-790
v. Davies II-893, 894
v. Morris II-353, 354
Varden v. Hawkins II-825
Varick v. Jackson I-5
Varnar v. Bevil I-429
Varnell v. Loagne I-586
Varnum v. Taylor II-112
Vastine v. Dinan II-161
Vauderslice v. Mathews III-568
Vaughan v. Bunch I-212, 254
v. Burford I-125
v. Dickens II-502
v. Farmer I-797
v. Himes III-572
v. Northrup III-135, 515
v. Vaughan II-563, 785
Vaughn: Estate of II-848
Vaughn v. Barrett I-336
v. Deloatch III-181
v. Howard II-682
v. Hudson III-438
v. Lovejoy II-588
Vaux v. Nesbit II-273
Vawter v. Hultz II-32
v. Missouri Pacific R. R. II-29
Veazey v. Whitehouse II-559
Veazie v. McGugin I-565
v. Marratt III-573
Vedder: Matter of II-753. III-506
Vedder: Will of I-802. II-481
Vedder v. Saxton II-873
Venable v. Mitchell I-563
Ventress v. Brown II-757, 899
v. Smith II-137
Verdier v. Bigni II-239
v. Roach II-238
v. Verdier I-126
Ver Duin v. Ver Duin III-319
Vermilyea v. Beatty I-311. III-137, 515
Vermont Baptist Conv. v. Ladd II-751
Vernam v. Spencer I-130
Verner: Estate of III-395, 415, 416
Vernet v. Williams II-750, 751
Vernon: Estate of I-624
Vernon v. Kirk I-106, 114
Vernor v. Henry II-427
Verplanck: Matter of I-356
Verrill v. Weymouth II-518
Vestal v. Allen III-512
Vester v. Collins III-581
Vickery v. Hobbs I-231
Vidal v. Commagere II 887
v. Girard II-274, 275, 285, 300, 302, 304
v. Philadelphia II-288
Villard v. Robert II-161
Vincent v. McMaster I-405
v. Martin III-656
v. Newhouse I-808
v. Platt I 819
v. Vincent II-867
Vining v. Willis I-88
Vinson v. Vinson II-349
Virgin v. Gaither I-897
Vischer v. Wesley III 573
Vittum v. Gilman II-26. III-287
Vodges: Estate of III-421, 422
Vogel v. Arbogast II-181
Vollmer: Succession of I-117
Von Arx v. Wemple II-254, III-585, 586
Voorhees: Matter of I-160
Voorhees v. Stoothoff III-366, 418
v. Voorhees I-456. II-274, III-422
Voorhies v. Child I-798
Voorhis: Matter of I 127
Voshage v. Voshage III 314
Vosler v Brock I-714. III 177
Vowers: Matter of II-794
Vredenburgh v. Calf I-712
Vreeland v. Ryno I 86
v. Schoonmaker III 364
v. Van Ryper II-830
v. Vreeland II-253
Vroom v. VanHorne I-488
Vrooman v. Powers I-169

W.

Wabash, etc., Railway Co. v. Shacklett I-430
Wachter v. Blowney III-580
Waddell v. Lamier I 68
v. Leonard II-363
Waddill: Succession of II-869, 872
Waddill v. John II-243
v. Martin III-441
Waddington v. Buzby I-64, 413

Wade v. American Colz. Soc. II-288, 300, 303, 316
v. Bridges I-611
v. Hardy III-578
v. Holbrook I-24, 49, 59, 239
v. Kalbfleisch II-26
v. Potter III-285, 560
v. Pritchard III-509
Wadleigh v. Janorin I-867
Wadsworth v. Connell III-364
v. Henderson III-206
v. Ruggles II-489, 491
v. Wadsworth II-273
Wager v. Wager III-507, 652
Waggoner v. Lyles I-458, 462, III-170
v. Miller II-913
Wagner's Appeal II-645
Wagner v. Ellis I-73
v. McDonald I-232
v. Sharp II-912
v. Varner II-887
Wainwright: Appeal of I-62
Wainwright: Estate of III-201
Wainwright v. Sawyer II-518, 528
v. Tuckerman II-604
Wait v. Belding I-264
v. Holt III-313
Waite v. Frisbie I-114
Wakefield v. Gilleland II-893
v. Phelps I-71
Wakeman v. Hazleton III-356
v. Paulinier II-236
Walden v. Walden II-74
Waldron v. Berry I-358
v. Schlang I-797. III-372
v. Waldron III-188, 196
Wales v. Willard I-544, 677
Walker's Appeal II-197, 198, 867, III-420
Walker: Estate of II-453. III-215, 216, 440, 444
Walker: Will of II-289
Walker v. Abercrombie III-471
v. Atmore III-193
v. Bradley II-252
v. Brooks II-894
v. Byers II-238. III-207, 568
v. Bynam III-416
v. Cheever II-211. III-567
v. Craig II-132, 134
v. Crosland I-650
v. Deaver III-205
v. Dewing II-823
v. Diehl II-249. III-175, 177, 373
v. Dougherty I-592
v. Downer III-197
v. Drew II-250. III-652
v. Dunshee II-348, 380
v. Eyth III-286
v. Griffin II-406
v. Hall I-237, 242. II-180
v. Hill II-252. III-375
v. Johnson III-654
v. Johnston II-344
v. May I-488
v. Murphey III-371
v. Patterson III-315
v. Potilla I-637
v. Sherman I-867
v. Steele III-579
v. Torrance I-702, 703
v. Tyson II-134
v. Vincent II-574
v. Walker I-10, 129, 131, 175, 410 886. II-306, 321, 322, 392, 757, III-518
v. Wigginton II-241
v. Williamson II-359
Walkerly: Matter of II-873
Wall's Appeal III-280
Wall v. Allen I-626, 638
v. Dickens II-774
v. Fairley III-472
v. Jones III-208
Wallace: Matter of III-7
Wallace v. Du Bois II-513, 618, 619, 621, 651
v. Fitzsimmons I-793
v. Gatchell II-242, 244
v. McMicken II-406
v. Minor II-349
v. Myers III-4
v. Nichols III-506
v. Owen II-896. III-581
v. Reddick II-890, 893, 897
v. Walker I-699, 701
v. Wallace II-437, 661, 795. III-196
Waller v. Catlett III-368
v. Logan I-798
v. Waller I-95, 111, 112, 130
Walling v. Burgess III-185
Wallingford v. De Bell II-518, 546
Wallington v. Taylor III-202
Wallis v. Cooper I-534
v. Wallis I-210, 212, 214, 230
Walls v. Garrison II-377
v. Grigsby III-364
v. Stewart II-437. III-201
Wally v. Wally II-873
Walm: Estate of II-675
Walm v. Emly III-191, 199
Walrath v. Handy III-507
Walsh: Will of I-104, 105, 107, 114
Walsh v. McKnight II-483
v. Matthews II-587
Walston v. White I-417, 424
Walt v. Walsh III-480
Walter's Appeal III-191
Walter: Will of I-156
Walter v. Ford II-184
v. Radcliffe III-574, 575
Walters v. Hill III-283
v. Nettleton II-26
v. Prestidge II-242, 243
v. Ratcliffe I-692
v. Stickney I-710
Waltham Bank v. Wright III-660
Walthour v. Walthour III-415
Walton v. Ambler I-354, 673
v. Pearson III-584
v. Torrey II-576
v. Walton I-264. II-443, 488
Wampler v. Wampler I-20, 132, 133
Wamsley v. Wamsley III-558
Wanger's Appeal II-875. III-204
Warbass v. Armstrong III-446
Ward's Appeal II-227
Ward: Will of I-238
Ward v. Blackw II-101
v. Cameron I-702. 708
v. Coffield III-196
v. Dodd II-341, 774, 823, 830
v. Dunham II-249. 252
v. Espy II-427
v. Glenn I-674
v. Kitchen III-366, 367
v. New England Screw Co. II-462. 583
v. Parker III-424
v. Peloulet I-159
v. Plato III-582
v. Saunders II-382
v. Storr II-382
v. Sutton II-360
v. Thompson I-530
v. Tinkham I-637. III-365
v. Tomkins II-344, 345
v. Ward II-560, 774, 781, 868, III-191, 192, 438, 439, 442, 443, 446
v. Wolf II-794, 873
Wardell: Estate of I-245
Warden v. McKinnon III-653, 658
v. Richards II-155
Wardlow v. Home for Incurables II-286
v. Miller II-912
Wardwell v. McDowell I-331. II-155
Ware: Exparte II-211
Ware v. Cook II-517
v. Fisher II-409, 510
v. Hawley II-235. III-570
v. People I-258
v. Ware I-407
v. Wisner I-245
Warfield v. Brand I-564, 637, II-161
v. Gardner II-235
v. Warfield II-890, 898
Waring v. Lewis III-359, 362, 364, 412, 423
v. Purcell I-843
v. Waring I-798. II-828
Warley v. Warley III-215, 217, 219
Warner's Appeal II-507, 824
Warner: Estate of I-157
Warner: Matter of II-76
Warner v. Bates I-157
v. Beach I-239, 245
v. Black I-238
v. Durant II-527, 544
v. Knower III-355, 366
v. Swearingen I-264
v. Warner I-183, 252, 255. III-196
v. Wiltenberger I-424
Warns v. Palmer I-169
Warren: Matter of II-481
Warren v. Banning III-352
v. Baxter I-118
v. Carter I-708
v. Gregg II-684
v. Hearne III-176
v. Hembree II-518
v. Hofer II-926, 927
v. Morris II-785, 792
v. Paff III-578
v. Raymon III-200
v. Taylor I-242, 242
v. Webb II-700
v. Wigfall II-437
Warrick v. Hull III-580
v. Hunt III-179
Wart v. Bovee I-794
Wartman v. Skinner III-171
Warwick v. —— II-102
v. Andrews II-565
v. Warwick I-95, 108
Washburn v. Gould II-53
v. Hale II-182
v. Hall II-866
v. Sewall II-300, 303, 321, 322
v. Sproat III-184
v. Van Steenwyk II-779, 784
v. Washburn II-867
Washington v. Abraham I-803
v. Black III-423
v. Blount I-326
v. Emery II-370
v. Sasser III-208
Washington University Appeal II-427
Wassell v. Armstrong III-580
Waterbury v. Netherland II-772, 789
Waterman v. Alden I-705. II-846. III-353, 356, 357, 378
v. Dockray II-159
v. Hawkins II-716
v. Whitney I-179
Waters v. Collins II-672, 675
v. Cullen I-42, 51
v. Howard II-773, 779
v. Stickney I-293, 381, 721
v. Tazewell II-399, 587, 588
v. Waters II-344
Wathen v. Glass III-182
Watkins v. Donnelly I-386
v. Jenkins III-188

Watkins v. Quarles II-515, 516, 521, 524, 565
v. Romine II-170, 196
v. Shaw I-640
v. Stewart III-354, 367
v. Tate III-285
v. Watkins II-782, 786
v. Young II-649, 897
Watrous v. Chalker II-251
v. Winn II-785
Watson v. Bonney II-411
v. Boylston I-417
v. Glover I-699
v. Kelty I-818
v. Martin I-803
v. Mayvant I-278
v. Penn II-50
v. Pipes I-131, 406
v. Rose II-234, 254
v. Turner I-253, 464
v. Watson II-247, 775, 783
v. Whitten III-419
v. Woods II-502, 547
Watt v. White II-239
Wattles v. Hyde II-198
Watts: Matter of III-424
Watts v. Baker III-581
v. Frazer III-657
v. Holland I-168, 169
v. Taylor III-208, 217, 584
v. Waddle I-679
v. Watts II-868. III-199
Waugh v. Riley I-13
Waver v. Waver III-582
Way v. Gest II-390
v. Harriman III-580
v. Priest II-755
v. Stebbins I-794. II-251
Wayland v. Crank II-135, 140
Wayman v. Jones III-395
Weakley v. Gurley III-505, 586, 665
Wears v. Locke II-863
Weatherhead v. Baskerville I-419
v. Field II-649, 897
v. Sewell I-417, 419
v. Stoddard II-517
Weatherly v. Kier II-757
Weatherwax v. Woodin II-893, 897
Weaver v. Chace I-530, 589, 702
v. Norwood I-352, 445, 484
v. Roth III-579
v. Weaver II-875
Webb's Appeal II-74
Webb: Matter of I-430, 431, III-515
Webb v. Dietrich I-274
v. Evans II-779, 788
v. Fish II-22
v. Fleming I-126
v. Fuller III-506
v. Goodnough II-483, 586
v. Gross I-641
v. Jones I-75, 237. II-642
v. Neal II-274, 302
v. Webb I-426
Weber v. North I-637
Webley v. Lanstaff I-417
Webster: Case of I-641
Webster: Ex parte I-646
Webster: Matter of I-636
Webster v. Cooper II-564, 583
v. Elsworth II-539
v. Hammond II-216
v. Lowell II-24. III-472
v. Morris I-157. 797, 805. II-306, 314, 318, 319, 323, 427, 562
v. Sibley III-578
v. Thompson I-612
v. Webster I-242. II-236. III-576
v. Weiss II-469
v. Welton II-845
Wedekind v. Hallenberg II-536
Weed v. Aldrich II-637
Weehawken Ferry v. Sisson II-888
Weeks: Estate of I-635
Weeks: Matter of III-437, 443
Weeks v. Cornwell II-432. III-412
v. Gibbs I-317, 320
v. Hobson II-315
v. Jewett I-530. II-706, 855, III-471
v. Patten II-773, 775, 777, 782
v. Weeks II-541, 705, 773, 775, 784. III-192
Weems v. Bryant II-182. III-132
v. Weems I-118, 410
Weigand's Appeal III-394
Weihe v. Statham I-647
Weill v. Clark II-237
Weimar v. Fath I-565. II-155
Weinerth v. Frendley III-169
Weir v. Fitzgerald I-19, 20, 47, 132, 415
v. Humphries II-823
v. Monahan I-536, 637, 649, 677, II-160
v. Mosher II-153
v. People II-800, 847
v. Tate III-358
Weise v. Rich III-183
Weishaupt v. Brehman II-500
Weitman v. Thiot III-173
Welch's Appeal II-633. III-201
Welch: Estate of I-707
Welch: Matter of I-164
Welch v. Adams I-120, 129, 484, II-691, 753, 754. III-579
v. Anderson II-778
v. Welch I-888. II-254
Weld v. McClure II-160
v. Putnam II-756
v. Strong I-804. III-193
Weldy's Appeal III-395
Weller v. Weller II-241
Welles v. Cowles II-24, 50. III-139
Welling v. Welling III-441
Wellington v. Chick II-760
Wellmeyer: Succession of II-872
Wells: Matter of II-506
Wells v. Applegate III-565
v. Child I-625. III-576
v. Dietrich I-707
v. Disbrow II-756
v. Doane II-316, 319
v. Elliott III-184
v. Ely II-740
v. Hawes I-157
v. Middleton I-67
v. Miller II-240
v. Robinson III-652
v. Stearns I-675
v. Tucker I-897
v. Wells I-183, 194, 242
v. Wilder II-866
Welsch v. Belleville II-700
Welsh: Matter of I-54, 60, 61
Welsh v. Adams II-750
v. Brown II-662, 695, 753
v. Crater II-349, 381, 912
v. Welsh III-510
v. Woodbury II-90
Wendell: Matter of II-23. III-421
Wendell v. Crandall II-534
v. French III-414, 443
Wengerd's Appeal II-516, 519
Wenner v. Thornton I-564
Wenninger v. Fletsam III-177
Werdenbaugh v. Reid III-660
Werenke v. Kenyon II-227
Werkheiser v. Werkheiser I-170
Werner v. McPike II-240
Wernick v. McMurdo II-160
Wernse v. Hall I-533, 701
v. McPike II-243, 251
Werskoff v. Dibble I-677
Werts v. Spearman III-173
Wescott v. McDonald III-173
Wessenger v. Hunt II-344
West v. Bank of Rutland II-255
v. Biscoe II-559
v. Bolton II-645, 891, 894, 896, 898
v. Cauthen II-732. III-368
v. Fretz I-799
v. Jones II-899
v. Moore II-563
v. Thornburgh I-543
v. Waddill I-387. II-139, 140, III-423, 656, 657
v. West II-506, 824, 827. III-422
v. Williams II-510
v. Wright III-352
Westbrook v. Romeyn II-539
Westcott v. Cady I-676. II-706, 823
Western: Matter of I-60
Westfield v. Westfield II-240
Weston: Matter of III-371
Weston v. Foster I-418. II-344
v. Hight I-897
v. Jenkins II-480
v. Johnson II-648
v. Ward III-371
v. Weston I-867. II-381, 535, 546
Westphal v. Carter III-315
Wetherbee v. Chase III-199, 656
Wetler v. Habersham I-25
Wetmore v. Carryl I-160
v. Hegeman III-138
v. Parker I-174, 253. II-304
v. Peck I-805. II-752, 753
v. St. Luke's Hospital II-441, 661, 824
Wetter v. Habersham II-386, 912
v. Walker II-399
Wetzler v. Fitch II-111
Weyer v. Second National Bank II-133
v. Watt III-423
Weyman v. Ringold II-517, 829
v. Thompson III-396, 397, 656
Whall v. Converse II-341
Wharton v. Shaw I-806
v. Silliman II-361
Wheat v. Dingle III-221
v. Fuller I-325, 484, 676
Wheatland v. Dodge II-354
Wheatley v. Badger III-378
v. Martin III-362
Wheeler: Estate of I-805
Wheeler: Matter of I-708
Wheeler v. Allan II-502
v. Bent I-183
v. Bolton III-182, 373, 417, 560, 569, 666
v. Bowen II-848
v. Brem II-693
v. Dunla I-418. II-460
v. Floyd III-206, 585
v. Hartshorn II-448, 632, 759, III-508
v. Hathaway II-750, 755
v. Lester II-515, 516, 558
v. Perry III-368
v. Ruthven II-750, 757
v. Single III-511
v. Smith II-299, 300, 319
v. Walker II-558, 560
v. Wheeler I-237. II-153, 896
v. Whipple I-64
Wheelwright v. Wheelwright III-444
Whelan: Matter of II-194
Whelan v. Reilly II-406
Whelpley v. Loder I-60, 65, 413
Whilden v. Whilden II-779, 788
Whisnand v. Small III-171, 184
Whitaker: Estate of I-387, 388, 674, 675. III-370
Whitaker v. Whitaker I-529, 898, II-161, 899, 710
Whitbeck v. Patterson I-125
Whitcomb: Estate of I-161

Whitcomb v. Coo II-26
v. Davenport II-245
v. Reid II-871
v. Taylor II-694
White: Estate of I-635. II-170, 433
White: Ex parte I-534
White: Matter of I-25, 42. II-196, 197, 432
White v. Archbill III-583
v. Bailey I-410
v. Beattie III-216
v. Braintree Parish II-275
v. Brocaw II-773
v. Brown I-700. II-241
v. Bullock III-394, 440. 441
v. Casten I-184
v. Curtis II-534
v. Ditson I-639, 640. II-318
v. Donnell II-710, 750. 751
v. Duggan I-631
v. Fiske II-306, 313
v. Green II-661. III-216
v. Henly III-478
v. Hicks I-419
v. Howard I-806. II-270, 271, 285, 320
v. Kane II-788. III-190, 200
v. Kaufman III-191
v. Lowe I-532
v. Mann I-296, 312
v. Moore II-894, 895, 897
v. Price II-136
v. Pulley III-475
v. Rowland II-359, 540
v Spaulding I-702, 711
v. Spillus I-683
v. Staufield II-49. 380
v. Starr I-712
v. Stoddard III-354
v. Story III-362
v. Swain III-575
v. Thompson III-314
v. Weatherbee I-646, 651, 676
v. White II-785, 892, 897
v. Williamson II-354
v. Winchester II-443. 696
Whitehead: Matter of I-627
Whitehead v. Coleman III-509
v. Gibbons III-188, 189, 215, 217
v. Lassiter II-340, 342. 362
v. McBride II-868
v. Park II-483
v. Thompson II-497
v. Wilson I-797
Whiteley v. Alexander II-139
Whiteman v. Swen II-873
Whitenack v. Stryker I-45. 406, 410. II-194
Whitesides v. Barber III-170
v. Whitesides II-563, 566
Whitfield v. Hurst I-78. 356
v. Woolf III-375
Whitford v. Crooks III-183
Whitin v. Paul III-354
Whiting v. Cook II-823
v. Leakin III-133. 570
v. Whiting I-156, 796. III-657
Whitley v. Alexander II-133, 135, III-359, 377
v. Stephenson II-873
Whitlock v. Washburn III-320
v. Whitlock II-717
v. Willard III 473
Whitman's Appeal II-645
Whitman v. Heywood I 675
v. Lex II-303
v. Morey I-30, 55. 424
v. Railroad Co. I-794
Whitmore v. Foose II-232
v. San Franscisco Savings Union II-233. 239
Whitney v. Peddicord III-358, 372. 418
v. Phœnix II-481. III-445
v. Twombly I-24. 45. 47
v. Whitney II-281, 348. III-507
Whiton v. Harmon II-572
Whitridge v. Parkhurst II-783
v. Whitridge III-581
Whittaker v. Whittaker I-438
v. Wright I-708. II-198
Whitted v. Webb III-361
Whittemore v. Hamilton II-620
v. Russell II-491. 706
Whittier v. Waterman II-700
v. Woodward II-247
Whittle v. Tarver III-200
Whitworth v. Ewing II-755
v. Oliver I-635, 722
Whorton v. Moragne II-134
Wickham v. Page I-649. II-160, 162
v. Stern III-561, 587
Wickwire v. Chapman I-533
Wieting v. Bellmyer III-202
Wiggin v. Perkins II-536
v. Plumer I-721
v. Swett II-49, 112, 162, 695
Wiggins v. Lovering III-574
Wikle v. Woolley II-483
Wikoff: Appeal of I-138
Wilb v. Bird III-584
Wilbanks v. Wilbanks II-777, 780 781
Wilbar v. Smith II-825
Wilber: Applic'n of II-787
Wilber: Matter of II-792
Wilber v. Wilber II-787
Wilbourn v. Shell I-162
Wilbur v. Gilmore II-24
v. Hutts I-647
v. Moxam III-508
v. Tobey I-13
Wilburn v. McCalley III-314
Wilcocks: Matter of II-578
Wilcox: Estate of III-175
Wilcox v. Jackson II-234, 246, III-219
v. Quimby I-707
v. Smith II-198, 847
v. State III-584
v. Wilcox III-190, 215, 216
Wilcoxon v. Donelly II-851
v. Reese I-574, 575. II-162
Wild v. Brewer I-244
v. Davenport III-320
Wilde v. Wilde II-662. 750
Wilder v. Aldrich II-73. 74
v. Blount II-432
v. Keeler III-286
v. Ranney I-801
Wilderman v. Baltimore II-317
Wile v. Wright II-234. 241
Wiley v. Brainerd I-702
v. Smith I-417. 418
Wilhams v. Jones I-680
Wilkerson v. Allen III-170, 176
v. Gordon II-241
v. Wooten II-152
Wilkes v. Cornelius III-281
v. Harper III-216
Wilkey: Appeal of I-529, 531, 540
Wilkins v. Baker III-582
v. Ellett II-926. III-134
v. Ordway II-385
v. Taylor I-802
v. Wilkins II-899
Wilkinson v. Barringer II-244
v. Conaty I-544
v. Hunter II-118
v. Leland I-673, 674
v. Methodist Episcopal Church I-675. II-774
v. Pearson I-410
v. Thomas II-645
v. Trustees III-507
v. Ward III-130
v. Wilkinson II-573
Wilks v Slaughter III-361
Willamette v. Gordon I-468. 673
Willard: Matter of III-175 204
Willard v. VanLeeuwen II-236, 240, 244
Willeford v. Watson II-851
Willel v. Malli II-194
Willets: Matter of III-412, 441, 442
Willets v. Willets I-157, II-319
Willetts v. Rutter II-535
v. Titus II-482
Willey v. Hunter III-579
Williams: Appeal of I-531, 532, 563, 701. II-873. III-317
Williams: Case of I-705
Williams: Estate of I-104
Williams: Matter of I-388. 394, 539, 677. II-751, 752
Williams v. American Bank II-226, 258. III-413
v. Ash II-574
v. Bachelor II-651
v. Campbell II-135. III-339, 368
v. Carson III-132
v. Conrad II-344, 363, 534. III-564
v. Cotten II-694
v. County of San Saba III-183
v. Cowden II-587
v. Crary I-420. II-610
v. Cubage II-159. III-354, 445
v. Cushing I-331, 647. II-716, 824. III-375, 378
v. Eaton II-225, 236. III-186
v. Ely II-132
v. Fitch I-677
v. Flippin I-637, 638, 652, 653, III-572
v. Freeman I-258. II-822
v. Fuller I-795
v. Gray II-773. 779
v. Herrick III-424
v. Holmes II-846
v. Jones I-434. II-575, 868
v. Kenney III-187
v. Kernan I-635. 678
v. Kibler II-822
v. Lee I-410
v. Lumpkin II-238
v. McCombs I-94
v. McIntyre I-418
v. Maitland III-360, 394
v. Moore III-479. 480
v. Morehouse II-182. 626. III 132
v. Mower II-847
v. Murray II-154
v. Neff II-507, 830
v. Neville I-534. 546
v. Parker II-575
v. Pearson; II-300, 308, 313, 321. 322, 323
v. Petticrew III-417, 418, 422
v. Purdy II-242, 247, 267
v. Rhodes II-140. III-419
v. Riley III-471
v. Robinson II-213, 589. III-422
v. Seaman II-541
v. Sneed II-353
v. Stonestreet II-893
v. Swift II-139
v. Tobin I-704
v. Tolbert I-152
v. Towl III-184
v. Van Cleave II-518
v. Verne I-574, 631. II-160. 161. III-474
v. Western Star Lodge II-308
v. Williams II-235. 267, 300. 306 516, 574, 585, 586. 753, 866, 867. 900, III-136. 192. 356, 364. 577
Williamson: Appeal of I-543
Williamson: Estate of II-874. III-367, 442
Williamson v. Anthony II-249. 267
v. Branch Bank II-188
v. Chamberlain II-588

Williamson v. Field II-536
v. Furbush I-445, 539
v. McCrary II-245
v. Williamson I-138, II-382, 514, 524, 534, 670, 751, III-216, 415
Willing v. Perot I-600, III-135
v. Peters I-800
Willingham v. Chick II-235, 238, III-583
Willis v. Farley II-239, 245, 247, 252
v. Ferguson I-574
v. Jenkins I-418
v. Jones I-530
v. Missouri Pacific R. R. II-30
v. Mott I-128, 129
v. Roberts II-75, 516, 565
v. Sharp III-195, 319
v. Smith III-511
v. Smyth III-138
v. Watson I-264
v. Willis III-354
Willoughby v. McCluer II-183
v. Matley II-888
Wills v. Johnson II-359
v. Sloyer I-800, 801
v. Wood III-582
Willson v. Kelly II-899
v. Nicholson I-793
v. Tyson II-664
v. Whitfield I-275
v. Willson II-195
Wilmarth v. Reed III-182
Wilmerding v. McKesson III-365, 395, 396
Wilmington v. Sutton II-869
Wilson: Appeal of I-65, III-217, 396
Wilson: Estate of II-661, 669
Wilson: Matter of I-405, III-581
Wilson: Will of I-405
Wilson v. Arny II-777, 779
v. Arrick I-576, II-159
v. Atkinson II-399
v. Bothwell III-480
v. Bynum III-171, 584, 585
v. Cox II-784
v. Davis III-205
v. Demander III-511
v. Dibble I-585
v. Edmonds I-675
v. Fosket I-244, 426, II-491
v. Foster I-420
v. Frazier I-700
v. Fridenburg II-786, 789, 793, III-314, 318
v. Fritts I-241
v. Gaston I-675
v. Hall I-298, 302, 306
v. Hamilton I-806, II-782
v. Hayne II-782, 786
v. Hetterick I-147
v. Holt III-180
v. Hudson I-302, 320
v. Kelly II-849, 894, III-585
v. Kirby II-214
v. Leishman III-667
v. Lineberger III-357, 393, 414
v. Miller II-646
v. Mitchell I-20, 45, 47, 48
v. Moore II-790, III-202
v. Moran I-67
v. Pearson I-576
v. Perry II-271, 427
v. Piper III-192, 200
v. Powell II-759, III-358
v. Randall II-850
v. Rine II-677
v. Rosseau II-53
v. Shearer II-197
v. Slaughter II-850
v. Staats III-354, 369, 446
v. Stanton III-169
v. Soper I-793
v. Tootle II-30
v. Unselt I-638, II-52, III-582
v. VanLeer I-354
Wilson v. Wilson I-264, 369, II-839, III-414, 567, 578, 587
Wilt v. Cutler I-434
Wilting v. Bellinger II-576
Wilton v. Eaton III-315
Wiltsie v. Shaw III-194
Wimbish v. Rawlins III-359
Wimple v. Fonda II-534
Winants v. Terlume I-806
Winbery v. Schwegeman III-180
Winchester v. Forster I-264, 265
Winder v. Diffenderfer III-417
Windsor v. Bell II-111, 250, 732, III-283
Winegar v. Newland III-651
Wineland: Appeal of I-95, 108
Winfield v. Burton III-205, 208
Wing: Matter of III-510
Wing v. Merchant I-897
Wingate v. Poole III-131
v. Wooten I-705
Wingetts' Appeal III-571
Wingo v. Caldwell III-581
Winn: Succession of I-707
Winnington: Estate of I-442, 443
Winona Bridge R. R. Co.: Matter of I-631
Winpenny: Estate of I-593, 594, III-168
Winship v. Bass I-277, II-625, III-132
v. Rawlins III-371
v. Winship II-783
Winslow v. Cummings II-306, 322
v. Goodwin II-344, 348, 547
v. Kimball II-281
v. Merchants Insurance Co. I-867
Winsor: Matter of II-850
Winston v. Jones I-797
v. Webb II-348
v. Young II-227, III-313
Winter v. Winter III-288
Winterhalter v. Workman's Guarantee Fund Ass'n II-23, III-132
Wintermute: Matter of I-47
Winthrop v. McKim II-589
Wise: Estate of I-443
Wise v. Foote I-56, 63
v. Getty III-475
v. Hogan III-573
v. Williams II-239, 251, III-561
Wiseley v. Findlay II-788
Wisener v. Maupin I-11, 24, III-507
Wisner: Estate of III-217
Wisner v. Barnet III-659
v. Kleinhaus III-368
v. Mabley III-437, 444
Wistar v. Scott II-888
Wiswall v. Stewart III-420
Witcher v. Wilson III-561
Witherspoon v. Watts I-705, II-441, 775, 795
Withinton v. Withinton I-406
Witman v. Norton III-193
Witmar v. Lex II-306, 316
v. Norton II-453
Witmer v. Ebersole II-823
Witter v. Mott I-255
Witters v. Sowles II-140, 225, III-220
Wittman v. Goodhand I-179
Woelpper's Appeal II-542
Wogan v. Small I-239, 410
Wolcott v. Wolcott I-692
Wolf v. Banks I-358, III-420
v. Bollinger I-183, 202
v. Ogden III-169
v. Schaeffner II-461
Wolfe: Matter of III-3, 367
Wolfe v. Kable III-579
Wolfenberger v. Bucher III-477
Wolff's Appeal II-896
Wolff v. Schaeffer I-628, 634, III-353, 422
Wolffe v. Eberlein I-610, 611
Wolin: Estate of II-830
Wolscheid v. Thome III-479, 480
Womack v. Boyd II-867
v. Greenwood III-572, 661
v. Smith II-539
Womans Missionary Soc. v. Mead II-426
Womrath v. McCormick II-541
Wonn: Estate of II-215
Wood's Appeal II-138, 348, III-442
Wood: Estate of I-4, 9, II-170, 461, III-315
Wood: Matter of I-160
Wood v. Beasley II-588
v. Bishop I-11, 65, 66, 392
v. Bott III-182
v. Brown II-152, III-397
v. Bryant III-478
v. Bullock I-90
v. Byington III-177
v. Camden Safe Deposit & Trust Co. I-160, II-427
v. Cherry I-240
v. Chetwood I-272, II-114
v. Cone I-806
v. Cosby I-362, III-470, 471
v. Flynn II-102
v. George II-469
v. Hopkins II-213
v. Keyes I-803, 806, II-384
v. Lee II-786, III-437, 444
v. McGuire II-342
v. Mathews I-354, 429, 443, 673
v. Mitcham II-374
v. Mitchell II-827
v. Myrick III-363
v. Nesbitt III-180
v. Riker III-571
v. Roane I-117
v. Robertson II-540
v. Rusco II-242, 267
v. Sawyer I-26, 141
v. Sparks I-331
v. Tallman II-184, 625, III-132
v. Trelabaw II-252
v. Tunnicliff II-252, III-558
v. Vandenburgh II-171, 672, 675
v. Washburne I-628
v. West III-479
v. White II-427, III-657
v. Williams I-634
v. Wood I-624, II-779, 787, 795
Woodbridge v. Woodbridge II-868
Woodburn: Estate of II-480, 781
Woodbury v. Obear I-39
v. Woodbury II-667
Woodcock v. Woodcock II-468
Wooden v. Kerr II-161
Woodfill v. Patton I-188, 189
Woodfin v. McNealy III-137
Woodhouse v. Phelps III-138
Woodley v. Holley III-363
Woodman v. Good I-419
v. Pease I-866
v. Woodman II-856
Woodruff v. Cox II-164
v. Lounsberry III-369, 370, 445
v. Migeon II-476, 492
v. Schultz I-612
v. Ward III-370
v. Woodruff III-584
Woods v. Elliott III-574
v. Garnett III-416
v. Legg II-113, 161
v. Nelson I-721
v. Ridley I-168, III-316
v. Sullivan II-457
v. White III-201
v. Woods II-555, 559, 827
Woodward: Matter of III-373
Woodward v. Dunster II-716, 829
v. James I-676, 677, II-381, 480

Woodward v. Thomas III-472
v. Walling II-559
v. Woodward II-789. III-198, 314
Woodworth: Estate of II-453, III-215, 217, 219
Woodworth: Matter of II-183, III-184
Woodworth v. Sherman II-53
v. Woodworth I-626, 648
Woody v. Brooks III-572
Woodyard v. Buffington III 658
v. Polsley III-585
Wooldridge v. Hancock I-169
Woolery v. Woolery I-239. II-893, 897
Wooley v. Crane I-544
Woolfork v. Sullivan I-320. III-361
Woolley v. Pemberton I-594. II-226
v. Schrader II-776, 780
v. Woolley I-144
Woolmer: Estate of II-827
Wooten: Estate of I-545, 701
Wootering v. Stewart II-213
Wootten v. Burch II-707
Wootters v. Hale III-580
Worcester: Estate of III-178
Worcester v. Worcester II-342
Worden v. Humeston &c. R. R. II-29
Workman v. Dommick I-118
v. Workman II-506
Works v. State III-579
Worley v. Hineman II-241
Worman v. Teagarden I-417. II-558
Wormley: Estate of III-285
Wormley v. Wormley II-893
Worth v. McAden I-297, 325. III-394
v. Worth III-191
Worthem v. Pierson II-785
Worthington: Estate of III-445
Worthington: Ex parte II-232
Worthington v. De Bardlekin III-568
v. Gitting I-712, 721
v. Huyler I-422, 491
v. Klemm I-133
v. Ridgely I-448
Worthley v. Hammond II-241
Worthy v. Brower II-851
v. McIntosh III-570
Wren v. Hynes II-502
Wright's Accounting III-424
Wright's Appeal II-646
Wright: Estate of I-144. 411. II-285, 750
Wright v. Brotherton I-9
v. Campbell II-138
v. Dugan II-540
v. Dungan III-395
v. Dunklin III-567, 655
v. Edwards III-176
v. Fleming III-505
v. Gilbert I-429, 430, 433, 484
v. Gooden II-534
v. Heffner II-137
v. Howe I-67
v. Lang I-652. III-132
v. Lewis I-26. 131
v. Linn II-300
v. McNatt I-704
v. Methodist Ep. Ch. II-285, 305, 321, 322, 380, 399, 502
v. Minshall II-636
Wright v. Mongle I-377
v. Schmidt I-632
v. Senn III-281
v. Shaw II-535
v. Sinn II-304
v. Thornton III-170
v. Trustees I-604
v. Wallbaum I-676
v. Ware I-353, 483. III-176
v. West II-779
v. Williamson II-51
v. Wright I-4, 179, 184, 539. II-247, 267. III-422, 562
Wuesthoff v. Germania L. I. Co. I-107, 151
Wunder: Estate of II-344
Wurts v. Page I-800, 802, 805
Wurtz v. Jenkins III-657
Wurzell v. Beckman I-212
Wyant v. Wyant II-102
Wyatt v. Rambo I-320. II-137
Wyche: Estate of I-532
Wyckoff v. Perrine II-437, 642
v. Van Siclen III-395, 445
v. Wyckoff II-559. III-190, 191, 362
Wyeth v. Stone II-381, 887
Wyman's Appeal III-361
Wyman v. Fox III-585
v. Gould I-407
v. Halstead III-125
v. Symmes I-119, 403
Wymore v. Mahaska Co. II-30
Wynkoop v. Wynkoop II-28
Wynn v. Bryce II-284, 800
Wynne v. Wynne I-264
Wynns v. Burden III-220
Wyse v. Smith III-217

Y.

Yale College v. Runkle I-213
Yarborough: Succession of II-242, 247
Yarborough v. Leggett III-362
v. Ward III-284, 312
Yard's Appeal II-506, 828
Yard v. Carman I-418
v. Murray II-827
Yardley v. Cuthbertson I-166
Yarnall: Will of I-168, 170
Yarrington v. Robinson III-562
Yates v. Clark I-628
v. Wilson I-630. III-396
v. Yates II-300
Yawger v. Yawger II-784. III-192, 202
Yeackel v. Litchfield III-420
Yearly v. Long III-202
Yearnshaw's Appeal II-546
Yeates v. Gill II-360, 370, 507
Yeatman v. Haney II-564, 578
v. Yeatman II-251
Yeaton v. Roberts II-341, 510, 515, 535, 829
Yeaw v. Searle I-708
Yeoman v. Younger III-422
Yingling v. Hessing II-250
Yniestra v. Tarleton II-237
Yoakum v. Selph II-31
Yoe v. McCord I-24, 45, 120, 129
Yohe v. Barnet II-849
York's Appeal III-569, 575
York: Matter of I-356
York v. York II-872
Yorkly v. Stimson II-781
Yost: Estate of II-518, 519, 756
Youmans v. Youmans III-204, 509, 655
Young: Appeal of I-242. III-201, 397
Young: Estate of III-579
Young: Matter of II-869
Young v. Alexander III-357
v. Barner I-25, 31
v. Boardman II-778, 785, 864
v. Brown III-656
v. Brush II-193. III-363
Young v. Carson II-437
v. Case II-534
v. Hicks II-793
v. Kennedy II-195, 197. III-563
v. McKinnie II-514, 517
v. O'Neal III-134
v. People I-633
v. Pickens II-773, 786
v. Ridenbaugh I-24, 46
v. Robinson II-341, 507, 513
v. Stoner II-514, 518, 546
v. Tuigg II-491
v. Wittenmyre I-444, 484, III-174, 185
v. Young II-232, 233, 244, 462, 781. III-176
Younger v. Duffie I-108
Youngs: Matter of II-214
Youngs v. Youngs I-264, 265
Yount v. Morrison I-818
Yun: Estate of I-585
Yundt's: Appeal II-891. III-415
Yuong v. Boyd II-785

Z.

Zabriskie v. Morris &c., R. R. Co. I-796
Zacharie v. Waldron III-473
Zachary v. Chambers II-233, 242
Zahrt: Matter of II-786
Zanesville Co. v. Zanesville II-304
Zapp v. Miller I-819, II-169
Zebach v. Smith II-155
Zehender: Estate of II-610
Zeigler v. Eckert I-420. II-619
Zeigler v. Mize II-876
v. Sprenkle I-638, 651
Zelle: Estate of II-442, 606, 646
Zeissweiss v. James II-272, 303, 317, 323
Zeiter v. Zeiter II-643
Zeller v. Griffith III-575
Zellner v. Cleveland I-796, III-470
Zeph: Matter of I-378, 678
Zerbe v. Zerbe II-462
Zerega: Matter of I-353
Zerega: Will of I-700
Zerkes v. Brown I-703
Zimmer v. Sennott I-160. II-478, III-202
Zimmerman v. Anders II-272, 300, 307
v. Streeter I-897
Zollickoffer v. Seth II-234

GENERAL INDEX.

ABATEMENT. (*See* REVIVOR, EXECUTION, JUDGMENT.)
of action,
none by death of any party where cause of action survives, II. 91, *et seq.*, 99 n., III. 241, 461 n., 485, 625.
nor in any case through death of party between verdict and judgment, II. 91. See III. 242.
one of several plaintiffs executors, III. 485.
by revocation of grant to administrator under old law, I. 719.
no abatement under Judicature Act, I. 719.
procedure under Judicature Act in lieu thereof, I. 719.
(*See* EXECUTION, REVIVOR.)
in U. S. courts, I. 431 n.
of probate contest, by contestant's death, I. 397 n.
for actions that survive or abate, *See* ACTION.
of annuities, II. 663 n.
(*See* ANNUITY.)
of legacy, II. 661, *et seq.*, III. 215 n.
general legatees must abate before specific, II. 661.
but a residuary legatee cannot call on them to abate, II. 662.
case where the estate becomes insufficient by *devastavit* of executor, II. 667.
legacies for specific purpose, II. 661 n.
support of widow, II. 661 n.
for consideration, after voluntary, II. 669 n., 675 n.
for maintenance of child, II. 672 n.
of husband, ib.
in lieu of dower, II. 670 n.
to widow, II. 670 n.
to relatives, II. 672 n.
not preferred by their order, II. 672 n., 675 n.
although payable "first," II. 672 n., 675 n.
"out of first moneys," ib.
nor to legacies in codicil, II. 675 n.
before specific, II. 661 n., 438 n.
executor cannot give his own legacy a preference, II. 661, 675 n.
priority among general legatees of purchasers above volunteers, II. 669—671.
what legatees are regarded as purchasers, II. 669—671.
in what other cases such priority is allowable, II. 673—675.
of specific legacies, II. 677, 661 n.
of legacies in the nature of specific legacies, II. 676.
specific legacies and devises, II. 438 n.
demonstrative legacies, II. 438 n., 444 n., 675 n.
of devises of the real estate, III. 150, 212, 166.
direction of will controls, II. 438 n., 670 n., 672 n., 675 n.
intention must be clear, II. 674 n., 675 n.
effect of charge on land, II. 676 n.
by birth of posthumous child, II. 670 n.
not legacy in lieu of dower, II. 670 n.
pleas in, abolished by Judicature Acts, II. 150 n., III. 451, 519 n.

ABROAD,
will made abroad, or of property there, I. 428, *et seq.* (*See* FOREIGNER.)
letters of administration of property abroad, or where next of kin is abroad, I. 505, *et seq.*
legatee, how executor may discharge his liability, II. 738. (*See* III. 29, 498.)

ABSENCE,
of executor or administrator,
administrator durante absentiâ, I. 595, *et seq.* (*See* ADMINISTRATION.)
transfer of stock, etc., standing in his name, 13 & 14 Vict. c. 60, and 15 & 16 Vict. c. 55, III. 599.
of legatee, executor may pay legacy into the bank under 36 Geo. III. c. 52 II. 738, III. 29.
beyond seas does not prevent Statute of Limitations running, III. 529 n.

ABSENT PERSONS,
how their interests may be bound in an administration action, III. 625, *et seq.*
administration on estate of, I. 546 n., 673 n., 678 n.

ABSOLUTE INTEREST,
what words will give, I. 811, *et seq.*, II. 377—379, 510 n., 707.

ACCELERATION,
of remainder after life estate renounced by widow, II. 535 n.

ACCEPTANCE,
of office as trustee, etc.,
implied from probate, I. 325 n.

ACCIDENT,
death caused by, action on behalf of family of deceased, II. 8, *et seq.* (*See* DEATH.)

ACCOUNT,
to be delivered of personal estate for duty, I. 723, *et seq.* (*See* PROBATE DUTY.)
semble only *primâ facie* proof of assets, III. 540 n.
action for, against executor, III. 588.
where testator directed that executor should not be compelled to account, III. 589.
notwithstanding account in spiritual court, III. 589.
if there are several executors, and some admit assets, an account may be decreed against the rest, III. 603 n.
in the probate court, III. 662. (*See* INVENTORY.)
who may compel executors to render, III. 139 n., 159 n., 662.
practice as to, III. 663.
action of,
for executor, II. 3.
against him, III. 517.
executor's accounts, 1744, *et seq.* (*See* ALLOWANCES.)
in what jurisdiction, I. 428 n., 429 n.
equity, III. 656 n.
by foreign administrator, I. 429 n., 431 n., III. 135 n., 137 n.
several co-executors, III. 394 n., 396 n.
executor and trustee, III. 378 n.
representative of deceased executor, I. 294 n.
predecessor, on citation of successor, II. 159 n.
citation to husband of administratrix, II. 114 n.
to representative of predecessor, II. 159 n.
by surrogate, after removal, I. 722 n.
by successor, after resignation, I. 714 n.
or removal, I. 722 n.
revocation of letters pending account, I. 710 n.
bill in equity for account of predecessor, I. 722 n.
settlement conclusive on collateral attack, I. 676 n.
necessary before suit on bond, I. 647 n.
failure a breach of bond, I. 641 n.
a ground for removal, I. 704 n.
inventory a pre-requisite to, II. 181 n.
no revocation of letters pending account, I. 710 n.
after resignation, I. 721 n.
or removal, II. 722 n.
opened for fraud or mistake, II. 161 n.
on application of surety, I. 637 n.

ACCOUNT.—*Continued.*
duty of executor to keep clear accounts, III. 600, 601.
costs of furnishing, III. 601.
he shall account for all profits, III. 398.
of a lease, III. 398.
of occupying buildings at less than fair rent, II. 125 n.
of the trade of testator, III. 398—401.
of the purchase of legacies, III. 402 n. (*See* II. 124 n., III. 628 n.)
of a sale, etc. to himself, III. 401, 402.
of compounding debts or mortgages, III. 401, 402.
of the purchase of the equity of redemption of an estate in mortgage to the testator, III. 402.
of private speculations, III. 402.
for the representative's own debt, III. 132 n.
for foreign assets, III. 134 n., 135 n.
for collections charged off as bad, III. 133 n.
in what cases charged with interest, III. 402—410.
how computed, III. 404—410.
charges and expenses should be included in and not in bill of costs, III. 494.

ACCOUNT DUTY, I. 723, *et seq.*
See *Probate Duty.*

ACCOUNT STATED,
executor may declare on, as executor, II. 79.
whether of money due *to testator*, or *to him as an executor*, II. 79.
executor may be sued on as executor, III. 288.

ACCOUNTANT-GENERAL,
office of, abolished and duties transferred to Paymaster-General, II. 719 n., III. 497 n.

ACCRUING SHARES,
whether they go to survivor with the original shares, II. 508.

ACCUMULATIONS
of income:
after death of life tenant, II. 482 n.
of annuitant, II. 482 n.
after estate *pur autre vie*, II. 482 n.
when payment discretionary with trustee, II. 482 n.
vesting not deferred by direction for, II. 527 n.
(*See*, ALSO, PERPETUITY.)

ACCUMULATIVE LEGACIES,
doctrine of, II. 602, *et seq.* (*See* CUMULATIVE LEGACIES.)

ACTION. (*See* REMEDIES, REVIVOR, EXECUTOR, *liability*).
what rights of action pass to an executor, etc., II. 2, *et seq.*, 20 n., 99 n.
how far executor represents testator in his contracts, II. 3.
exceptions, II. 3 n., 47, 49. See II. 38.
joint choses in action, II. 48.
choses in action assigned by deceased, II. 48.
ancient rule, *actio personalis moritur cum persona*, II. 4.
alteration of the rule, II. 4—6.
actions for torts to the person do not survive, II. 6, 33 n., 100 n.
American statutes, as to survival of torts, II. 20 n., 26 n., *et seq.*
action against any person causing the death of the testator, by neglect, stat. 9 & 10 Vict. c. 93, II. 9—11.
American statutes giving action for death of decedent, II. 21 n., 28 n., 30 n., 100 n.
against county, II. 28 n.
abatement on death of wrongdoer, II. 100 n.
statutory notice before letters issued, I. 363 n.
certain damages and expenses recoverable without the statute, II. 33 n.

ACTION.—*Continued.*
stat. 43 & 44 Vict. c. 42, limited amount of compensation to personal representative of workman killed against employer, II. 11, 12.
stat. 27 & 28 Vict. c. 95, s. 1, II. 11.
actions for torts to the freehold or chattels real, II. 5—8, 24 n.
for rents, II. 50 n., 51 n., 53 n.
use and occupation, II. 24 n.
injury to rental value, II. 53 n.
rent due surviving joint tenant, II. 51 n.
damages by condemnation, II. 24 n.
ejectment, II. 23 n., 50 n., III. 472 n.
stat. 3 & 4 Wm. IV. c. 42, II. 7.
whether survives to executor against hundred for injury by riot to leasehold premises, II. 7.
actions *ex quasi contractu* II. 12, 13.
arbitration award, II. 28 n.
appeal from award, II. 28 n.
bond, II. 86 n.
apprenticeship indenture, II. 22 n
life insurance policy, II. 22 n.
royalties, II. 53 n.
partnership settlement, II. 53 n.
deposits made by decedent as trustee, II. 138 n.
in actions on contracts, how far rule applies, II. 13, *et seq.*, 20 n.
where the breach was an injury to the person of testator, II. 13.
to a third person, II. 19, 20.
upon covenants respecting land, II. 14—20. (*See* COVENANT.)
contracts respecting land not under seal, II. 16, 25 n.
covenants by executor of reversioner for years, II. 19.
choses in action of wife, II. 54, *et seq.* (*See* HUSBAND AND WIFE.)
what actions accrue to executor after testator's death, II. 77, *et seq.*
for torts done in executor's time, II. 77, 87 n.
for trover, II. 27 n.
trespass to personalty, II. 87 n.
mutilation of testator's corpse, II. 28 n.
whether he has been in actual possession or not, II. 77.
he may sue as executor or individually, II. 77, 78.
or in both capacities, II. 82, 83, III. 521.
on contracts made with executor, II. 78, 79, 85 n.
he may sue as executor,
on an account stated, II. 79.
for money lent, II. 79.
for money had and received, II. 79.
for money paid, II. 79.
for goods sold and delivered, II. 79, 80.
for materials found, II. 80.
for work and labor, II. 79.
for property fraudulently transferred by deceased, III. 130 n.
as indorsee or holder of a bill, II. 80.
as payee of a note, II. 80.
whenever the money recovered will be assets, II. 80, 81.
but *all* the executors cannot sue on a contract made with one, notwithstanding the money recovered will be assets, II. 81.
not on bond to himself, II. 81.
to recover back money the payment of which is a *devastavit*, II. 82.
on a judgment, II. 82.
claims by or against executor as such may be joined with claims against him personally, II. 82, III. 521.
suits accruing in executor's time on contracts with testator, II. 82.
with testator and *his assigns*, II. 83.
suits accruing in executor's time by remainder, II. 84.
by condition, II. 84.
when the executor of the pledgor may redeem, II. 85.
what rights of action survive *against* an executor or administrator, III. 20 n., 222, *et seq.*
(*See* REMEDIES, EXECUTOR, *liability*).

ACTION.—*Continued.*
in matters of contract, III. 222—227.
to do a collateral act, III. 223.
though not named, III. 224.
accruing after testator's death, III. 224.
where contract was personal to testator, III. 224—227.
in matters of tort, III. 228—235.
rule, *actio personalis moritur cum persona*, III. 228.
examples of the rule, III. 228, *et seq.*
modification of the rule by 3 & 4 Wm. IV. c. 42, III. 234.
the executor may, in many cases, be made liable by suing him in form *ex contractu*, III. 229—233. (*See* III. 228 n.)
against executor, etc., of rector, for dilapidations, III. 235—238.
for breaches of trust, III. 238.
on debts of record, III. 240.
on joint contracts, III. 240, 290 n.
liability of executor in case of partnership, III. 243—250.
of deceased shareholders in public companies, II. 654, III. 250—252.
on covenants concerning the realty, III. 253, 254.
on contracts between landlord and tenant, II. 655 n., III. 254, *et seq.*
personal liability of executor,
for rent in his own time, III. 256, *et seq.*
for repairs, III. 262, 263.
for continuing to occupy premises held by testator from year to year, III. 264.
for the occupation by co-executor of lands demised for years, but not by deed, III. 264.
liability of executor for party walls, III. 264.
as to apprentices, III. 270.
as to a poor rate and a church rate, III. 271.
as to debts of husband and wife, III. 272—275.
as to an action for work and labor, with a view to a legacy, III. 276.
on continuing guarantee of testator, III. 279.
fines for admission to copyhold lands, etc., III. 276.
sci. fa. to executor of Judge to certify a bill of exceptions, III. 277.
certiorari to executor of coroner or justice to certify a record, III. 277.
against executor, etc., in respect of his own contracts, III. 288, *et seq.*
liability as executor, III. 288—292. (*See* EXECUTOR.)
personally, III. 292, *et seq.*
on a *devastavit*, III. 321, *et seq.* (*See* DEVASTAVIT.)
does not lie at law against an executor for a legacy, III. 517—519.
except in consideration of forbearance, III. 295.
or for a specific legacy after assent, III. 518.
or where he ceases to hold the legacy as executor, III. 517, 518.
nor for a distributive share under the statute, III. 517.
for recovery of land. (*See* EJECTMENT.)
against heirs and devisees, III. 205 n.
on administration bonds, I. 644 n.
to set aside foreign probate, I. 439 n.

ADDITIONAL LEGACIES, II. 602, *et seq.* (*See* CUMULATIVE LEGACIES.)

ADEMPTION,
implied revocation of will by, I. 242.
cannot be, if executor appointed, I. 245.

ADEMPTION OF LEGACIES.
by inconsistent legacy, II. 632.
of specific legacies. (*See* I. 260—264 n., II. 438 n., 633 n.)
of a debt, II. 633—635.
of stock, II. 636—638.
of partnership share, II. 638.
of goods, II. 638.
not by pawning, II. 638.
when by removal, II. 638—640.
of terms for years, II. 640.

ADEMPTION OF LEGACIES.—*Continued.*
by surrender and taking new lease under old law, II. 640. See I. 264 n.
effect of Wills Act, II. 640, 641.
of demonstrative legacies, II. 632, 444 n.
of legacies given as portions, II. 642, *et seq.*
by a testator *in loco parentis*, II. 651, *et seq.*
revival of adeemed legacy, II. 605 n.
as to wills made after January 1, 1838, II. 640, 641.
distinction between and satisfaction, II. 616 n., 646 n.

ADMINISTRATION. (*See* ADMINISTRATOR—COURT OF PROBATE.)
what amounts to an act of by executors, I. 327—331.
expenses of, II. 186, 187.

ORIGIN OF, I. 479, *et seq.*
Ancient prerogative of the crown, I. 479.
transferred to the prelates, I. 479.
by stat. Westminster 2, Ordinary bound to pay debts of intestate, I. 480.
by 31 Edw. III. stat. 1, administration to be granted to next friends, I. 480.
the jurisdiction of Ecclesiastical Courts to grant administration now exercised by Probate Division of High Court of Justice, I. 340, 481.

GRANT OF LETTERS,
penalty by stat. 55 Geo. III. for acting without letters, II. 173.
in which of the spiritual courts it was to be obtained under the old law, I. 337.
archbishop's prerogative, by reason of *bona notabilia*, I. 338. (*See* BONA NOTABILIA.)
when a grant need not be obtained, I. 547, *et seq.*
in the case of seamen or marines, I. 547, *et seq.* (*See* SEAMEN.)
will not be granted on executor's consent, I. 332 n.
cannot be a grant if there is an executor, I. 605.
but may be if there is another administrator, I. 605.
To whom general administration is to be granted, I. 489, 524 n., *et seq.*
Husband's right to be his wife's administrator, I. 489—492, 529 n., II. 855 n.
unaltered by Married Women's Property Act, I. 490.
where the marriage was voidable, I. 491.
where it was void, I. 491.
wife dying after a protection order, I. 491.
after dissolution of marriage, I. 491 n.
after judicial separation, I. 491 n.
husband convicted of bigamy, I. 492.
husband a bankrupt, I. 491.
husband dying before he obtains administration, I. 492, 493.
husband and wife drowned in the same ship, I. 493. (*See* I. 555, II. 59, 497, 583.)
when controlled by will of wife in cases not affected by Married Women's Property Act, I. 494.
law since that act, I. 494.
where wife is executrix of another, I. 494.
Widow's right to be husband's administratrix, I. 494, 530 n.
the ordinary might grant to her *or* next of kin, *or* to them jointly, I. 494, 495.
both jointly or both separately, I. 495.
the election of the court is in favour of the widow, I. 495.
when she may be set aside, I. 495.
divorced *a mensâ et thoro*, I. 496.
second wife's right after divorce by foreign law, I. 496.
Right of next of kin, I. 496, *et seq.* (*See* NEXT OF KIN.)
who are next of kin, I. 496—501, 529 n.
relations by mother's side equally entitled with those of father's, I. 499.
half-blood not excluded, I. 500.

ADMINISTRATION.—*Continued.*
primogeniture gives no right to preference, I. 500, 503.
females equally entitled with males, I. 501.
parties contesting must proceed *pari passu*, I. 502.
secus, where administration already obtained by one, I. 692.
several next of kin in equal degrees, I. 502, *et seq.*
administration granted to him whom the majority of interests desire, I. 503, 529 n.
exception as to half blood, I. 503.
a man used to business preferred, I. 504.
primogeniture, I. 503.
a son preferred to a daughter, I. 504.
next of kin also a creditor, I. 504.
next of kin a bankrupt, I. 504.
right of husband to administer to wife will not pass to his trustee in bankruptcy, I. 504.
next of kin a lunatic, I. 504.
the court prefers a sole administration, I. 504.
never forces a joint one, I. 504.
when an administrator is once appointed, another of the same degree cannot come in, I. 504.
personal disqualifications, I. 527 n., 538 n.
conflicting interest, I. 153 n., 529 n., 539 n.
relative of probate judge. I. 540 n., 701 n.
married woman, I. 538 n., 533 n.
alien, I. 538 n.
non resident, I. 539 n.
guardian of infant or lunatic, I. 538 n.
consideration for relinquishing right, I. 323 n.
where a party entitled to administration is resident abroad, I. 505.
next of kin excluded when they have no interest, I. 512.
next of kin dying before administration granted, his representative entitled, I. 513, 569.
but payment to next of kin no answer to an action by his representative as administrator, I. 514.
next of kin cannot be compelled to take out letters, though he has administered, I. 514.
administration granted to attorney of next of kin, I. 514.
what is sufficient authority to entitle the attorney to apply, I. 514 n. (*See* ATTORNEY.)
liability of attorney to be sued, I. 515.
next of kin renouncing, may retract, I. 542.
to a creditor, I. 516, *et seq.*, 533 n. (*See* CREDITOR.)
even though his right of action statute barred, I. 516, II. 267.
bond required from, I. 516.
citation of next of kin, I. 516, 517.
one creditor preferred to another on terms, I. 517.
affidavit of amount of property, I. 517.
creditor a mortgagee, I. 518.
who is to be considered a creditor, I. 518.
next of kin cannot oust him when appointed, I. 519.
when appointed he may oppose an interest or contest will, I. 519.
to a debtor, II. 626.
to surviving partner, III. 316 n.
to a corporation, I. 536 n.
to the public administrator, I. 380 n., 528 n., 534 n.
to a person without interest, I. 520.
letters *ad colligendum*, I. 520.
the Court of Probate may appoint an administrator not otherwise entitled, 20 & 21 Vict. c. 77, s. 73, I. 521, 534 n.
where a person shall die intestate or without an executor willing and competent to take probate, I. 521.
or where the executor is resident out of the United Kingdom, I. 521.
such appointment to appear in the oath of the administrator and administration letters and bond, I. 522.

ADMINISTRATION.—*Continued.*
court will not appoint under this section without special circumstances, I. 521 n.
instances of such circumstances, I. 521 n.
will not as a rule grant administration under this section to person otherwise entitled, I. 523 n.
citation of party having prior right,
requisite (or consent) before administration granted to another, I. 516 n., 523.
how citations are to be served, I. 517.
of property out of this country, I. 505.
of the effects of a foreigner, I. 505, II. 915, 916, *et seq.*
to a person domiciled out of this country of property here, I. 506, II. 915, *et seq.*
foreign consuls may administer to estates of foreigners dying here, I. 507.
rights and liabilities of foreign administrators, I. 507—509, III. 105, *et seq.*
of the effects of a bastard, I. 509, *et seq.*
of the effects of a person without kindred, I. 509, *et seq.*
of the effects of a felon, I. 512.
where the Queen is entitled, administration to be granted to the solicitor of the treasury, I. 510.
What is sufficient proof of, III. 465.
Of the mode of granting letters, I. 541, *et seq.*
by what instrument, I. 541.
form, I. 541.
time of granting, I. 541, 542.
after three years, I. 541.
renunciation, when it may be retracted, I. 542.
of estates under £100 through the County Court, I. 542. (*See* COUNTY COURT.)
subsequent grant of to be made where original grant registered, I. 359.
procedure in U. S., I. 543 n.
governed by equity principles, I. 543 n.
time for application, I. 545 n.
jurisdictional facts, I. 482 n., 543 n., 546 n.
presumption of death from letters, I. 546 n., 678 n.
death of absentee, I. 673 n., 678 n.
civil death, I. 378 n., 678 n.
in what jurisdiction, I. 351 n., 353 n.. 484 n.
locality of assets, I. 353 n., 484 n.
extent of authority, I. 483 n.
notice of appointment, II. 231 n.
effect on stat. of Limitations, III. 568 n.

WITH THE WILL ANNEXED, I. 553, *et seq.*
when necessary, I. 295, 553 n.
will not be granted until the executor's refusal of probate has been recorded, I. 332 n., 553 n., 561 n., 700 n.
instances of *quasi* intestacy, I. 553.
cases not within the statute of administration, I. 554.
after the executor has administered, I. 326, 334 n., 514, 567.
when granted, a legatee and next of kin may call on the administrator to prove will in solemn form, I. 394.
American statutes, I. 560 n.
in county where will probated, I. 561 n.
when granted, I. 561 n.
on application of foreign creditor, I. 612 n.
procedure, I. 561 n.
bond required, I. 562 n.
to whom to be granted, I. 554—559, 562 n., 563 n.
a person entitled cannot be compelled to take, though he has intermeddled with the estate, I. 514.
to him who has the greatest interest, I. 554.
residuary legatee preferred to next of kin, I. 554.
even where there is no residue, I. 555.

ADMINISTRATION.—*Continued.*
or he is only a trustee, I. 555.
his representative has the same right, I. 556.
no legal right to the grant, I. 556.
but where the same person is next of kin and residuary legatee, and the executors renounce, administration *cum testamento annexo* must be granted, I. 557 n.
to next of kin, if there is no residuary legatee, or he declines, I. 557.
he may be excluded if he has no interest, I. 557.
to a legatee or creditor, if next of kin declines, I. 557.
to a legatee for life rather than to a legatee substituted I. 557 n.
to the widow, I. 325 n.
what citations are necessary, I. 558, 687 n.
when the executor resides abroad, administration will be granted to his attorney, I. 559. (*See* ATTORNEY).
the letter of attorney may be revoked after administration granted and the executor obtain probate, I. 559.
consequence of the return of the executor, I. 559.
consequence of death of executor, I. 560.
not to the executor, I. 560, 281 n., 296 n.
the administrator cannot commence an action before letters, I. 485 n.
cases when will set aside, I. 561 n.
appointment not questioned collaterally, I. 561 n., 562 n.
covers entire personal estate, I. 563 n.
duties of, I. 546 n.
power to collect rents, II. 51 n.
does not include trust, I. 296 n., 323 n., 564 n., 565 n., II. 162 n.
power of sale, I. 565 n.
revocation of, I. 687, 721 n. (*See* I. 682, *et seq.* and REVOCATION, infra.)

DE BONIS NON, I. 567, *et seq.*
with the will annexed,
where sole or surviving executor dies after probate intestate, I. 567.
not where sole executor dies without proving, I. 567.
where one alone of several executors proves and dies, I. 567.
who is entitled to, I. 568.
not necessary where there is an administration, *durante minoritate* of the executor of an executor, I. 569.
necessary in case of executor of executor if original will not proved here, I. 567.
upon the death of an administrator, I. 570, 573 n.
of one of several, I. 570.
of a surviving or sole administrator, I. 570.
who is entitled to, I. 570—572, 575 n. See I. 518 n.
citation of next of kin before grant of, I. 572.
appointed by what court, I. 483 n., 573 n.
form of letters, I. 573 n.
presumption as to validity, I. 573 n., 574 n.
in collateral suit, I. 574 n.
for unadministered assets, I. 574 n.
for payment of debts, I. 574 n., 575 n.
for distribution, I. 575 n.
for sale of land under power, I. 575 n., II. 162 n.
under order of Probate Court, I. 575 n.
for suit for decedent's death, II. 34 n.
may sue on a bill of exchange delivered to administrator, II. 80, 85 n., 113 n.
when administrator entitled to rent reserved on an underlease by executor, I. 773, II. 108.
may get execution on judgment obtained by former executor, etc., II. 95, II. 109, 110.
estate of administrator *de bonis non*, II. 106, *et seq.* (*See* ESTATE.)
power of administrator *de bonis non*, I. 576 n.. II. 113 n., 158, 159 n.
may revive suit of predecessor, I. 576 n., 721 n., II. 101 n., 113 n.
may sue after abatement of predecessor's suit, II. 162 n.
may sue on contract of predecessor, I. 576 n., II. 112 n., 113 n.
may sue for overpayment made by predecessor, I. 576 n.

ADMINISTRATION.—*Continued.*
for property converted by him, II. 112 n.
for property unlawfully conveyed by him, II. 112 n., 133 n., 137 n., 159 n.
may sue for trespass before his appointment, II. 112 n.
may sue to vacate fraudulent conveyance by predecessor, II. 159 n., III. 511 n.
may receive all unadministered assets, II. 112 n., 159 n.
may settle with predecessor, and bind creditors, II. 161 n.
may take proceedings against predecessor, II. 159 n.
and against his sureties, I. 648 n., II. 160 n., 240 n.
and require accounting, II. 159 n.
may sue predecessor for his own debt to the estate, II. 625 n.
may continue proceedings for sale of land, I. 576 n.
and execute conveyance for land sold by predecessor, II. 113 n.
may execute a testamentary power of sale, I. 565 n.
he cannot distrain for rent reserved to executor of administrator, II. 119.
duties and liabilities of, I. 576 n.
priority with predecessor, II. 113 n.
liability for contracts of predecessor, II. 113 n., 172 n.
for defaults of predecessor, I. 576 n., II. 113 n., 161 n.
as surety on predecessor's bond, I. 644 n., II. 162 n.
substituted in suit against predecessor, I. 721 n., II. 101 n.
duty of defense, II. 113 n.
liability for balance due to predecessor, II. 114 n.
liability as trustee for husband of decedent, II. 75 n.
title of, how proved, III. 465, 466.

DURANTE MINORITATE, I. 577, *et seq.*, 586 n.
when necessary, I. 577.
minor a foreigner, I. 537, 581.
to whom it must be granted, I. 578—581.
not within stat. 21 Hen. VIII. c. 5, I. 578.
court has discretion as to person, I. 578.
to the guardian, I. 578—580, 538 n., 586 n.
sometimes excluded, I. 579.
court not bound by choice of the minor, I. 579.
rules of court as to grants to guardians, I. 580.
when the widow is *non compos* and son a minor, I. 581.
when it determines, I. 581—583.
scire facias, who shall then have, I. 583.
proceedings substituted for *scire facias*, by the Judicature Acts, II. 91, *et seq.*
effect of determination on action, II. 91, *et seq.*
what acts the administrator *durante*, etc., can do, I. 583. (*See* I. 595 n.)
exercise of power of sale, I. 595 n.
in an action by him the minority must be averred, I. 583, 584.
secus in an action against him, I. 584.
pleas by an administrator *durante*, etc., I. 584.
liability of administrator after office determined, I. 584—586. (*See* III. 620.)
to creditors, I. 584.
to a subsequent administrator, I. 585.
to infant when of age, I. 585, 586.
to deliver an inventory, II. 177, 178.
liability of infant on judgment against administrator, I. 586.
of executor of executor, I. 295 n., 586.
power of administrator, II. 158.
PENDENTE LITE, I. 587, 592 n., 594 n., *et seq.*
the court of probate has power to grant, I. 587.
also receivers of real estate, I. 588.
may require security from the receiver of real estate, I. 588.
when such a grant may be made, I. 589, 592 n.
whether it will be granted pending a suit in a foreign court to a person appointed by that court, I. 506 n.
of what the court must be satisfied before granting, I. 589.
will appoint an administrator in all cases in which the Court of Chan-

ADMINISTRATION.—*Continued.*
cery appoints a receiver, I. 589.
the administrator must be an indifferent person, I, 589, 592 n., 593 n.
is not to be considered the mere nominee of the parties, I. 590.
his power, I. 590, II. 158.
bond, I. 593 n., 594 n.
limit of authority, I. 593 n.
right to sue and be sued, I. 593 n.
accounting, I. 593 n.
removal, I. 593 n.
exercise of power of sale by, I. 587, 590, 591.
has no power to distribute residue, I. 587, 593 n.
has no business to construe the will, I. 590 n.
a receiver will not be appointed by Chancery Division if an administration *pendente lite* might be obtained, I. 591.
practice of old Court of Chancery, I. 591.
administrator [not liable to interest upon a balance in his hands during suit, I. 591.
might have been compelled to deliver an inventory, although a bill for a discovery had been filed against him in Chancery by another party, II. 178.
renumeration to administrators and receivers, I. 590, 594 n.
lis pendens includes an appeal to the House of Lords, I. 588.
administrator not liable to interest on balance in his hands pending suit, III. 404 n.

DURANTE ABSENTIA, I. 595, *et seq.* (*See* ATTORNEY.)
at common law before probate, I. 595, 600 n.
such administrator can assign property of deceased, I. 595.
after probate or letters, etc., by stat. 38 Geo. III., I. 595, 600 n., *et seq.*
the statute applies where executor is out of reach of process, I. 597
form of affidavit and of letters of administration, I. 597.
effect of return of executor, I. 559, 598.
effect of death of executor, I. 599.
what the administrator must allege in his statement of claim, I. 599.
admissions of executor not evidence against administrator, I. 599.
power of administrator, II. 158.
exercise of power of sale by, I. 595.
where administrator party in a suit, stock may be transferred into name of paymaster-general to abide order of court, I. 597.
executor returning to be made party to suit, I. 597.

TEMPORARY AND LIMITED ADMINISTRATIONS, I. 572, *et seq.*, 610 n.
not to be granted without consent or citation of persons entitled to general grant, I. 577.
a person entitled to general grant not to take a limited one, I. 577.
relation of special to general administrator, I. 606, 607, 608.
cum testamento annexo, I. 601.
when executor becomes *non compos*, I. 276, 602.
in case of executor limited as to time, I. 288, 289, 601.
limited till a will be transmitted to England, I. 601.
limited for receiving and investing dividends, etc., I. 601.
limited till arrival of executors, I. 602 n.
limited till a lost will the contents of which are not known is found, I. 602.
limited during the incapacity of executor or administrator, or next of kin, I. 602, 603.
granted though not found lunatic by inquisition, I. 602.
limited to a particular subject, I. 604.
to assign a trust term, I. 605.
to a particular legacy, I. 605.
limited to substantiate proceedings in equity (administrator *ad litem*), I. 606—608.
power of such administrator, I. 608.
not sufficient representation of estate in general administration action, III. 621.
revocation of such administration, I. 690. (*See* REVOCATION, *infra.*)

ADMINISTRATION.—*Continued.*
limited to a particular place, I. 610.
cæterorum representation, I. 609.
citation of party entitled to general grant, I. 609, 610.
(*See* ALSO ANCILLARY PROBATE.—PUBLIC ADMINISTRATOR.)
BOND, I. 613, *et seq.*
stat. of 22 & 23 Car. II., I. 613.
conditions of bond, I. 613, 627 n.
practice under the old law, I. 616.
separate bonds not allowed, I. 621.
how many breaches may be assigned, I. 618.
defendant cannot plead payment of money into court as to some of the breaches and performance as to the rest, I. 618 n.
22 & 23 Car. II. repealed by Court of Probate Act, I. 614.
persons to whom administration shall be granted under Probate Act shall give bond to the judge, I. 614.
penalty on bond, I. 615, 630 n.
court may reduce penalty, I. 615 n., 631 n.
power of court to assign bond, I. 616.
form of bond, I. 616, 628 n.
what is a breach of the condition of a bond, I. 616, 640 n., II. 180 n., 225 n.
separate bonds, I. 615 n., 629 n.
how far equity will relieve against forfeiture, I. 618.
by administrator *pendente lite*, I. 619.
when administrator is out of England, I. 619, 621.
when minor comes of age, I. 619.
justification of sureties to, I. 619, 633 n.
when sureties may be dispensed with, I. 618 n.
court cannot dispense with bond, I. 618 n.
administration bond by attorney of next of kin, I. 621.
administration bond by a third person for a wife entitled to administration when husband refuses to execute one, I. 621 n.
who are to attest the bond, I. 622.
number of sureties and amount of bond, I. 622.
preparation of bond, I. 622.
sureties to be responsible persons, I. 622.
original sureties will not be discharged and others substituted, I. 622.
bonds given before January 11, 1858, to remain in force, I. 617.
by executor, I. 623 n., 274 n.
form, I. 629 n.
justification, I. 628 n.
dispensed with, I. 625 n., 626 n.
by trustee, I. 627 n., II. 717 n.
by residuary legatee, I. 626 n.
by administrator *c. t. a.*, I. 562 n., 625 n.
d. b. n., I. 562 n., 627 n.
pend. lite, I. 593 n.
by public administrator, I. 627 n.
by administrator,
American statutes, I. 627 n.
given before appointment, I. 488 n., 627 n.
liable *de son tort* until given, I. 628 n.
joint and several, I. 629 n., 636 n., III. 396 n.
in two distinct capacities, III. 378 n.
successively, I. 562 n.
number of sureties, I. 632 n.
irregularity, I. 635 n., 633 n.
questioned collaterally, I. 628 n., 633 n.
removal for want of bond, I. 703 n.
necessary to complete appointment, I. 705 n.
liability of sureties, I. 629 n.
successive sureties, I. 629 n., 635 n., 636 n.
deceased surety, I. 635 n., II. 236 n.
extent of, I. 637 n., 638 n., 640 n.
rents collected, I. 638 n., II. 52 n.
illegal sales by predecessor, II. 113 n.

ADMINISTRATION.—*Continued.*
moneys held as trustee, II. 161 n.
fixed by judgment against principal, I. 636 n.
by insolvency commissioners, II. 254 n.
contribution *inter se*. I. 643 n.
discharge of surety by mistake, I. 628 n.
by alteration, I. 628 n.
by release, I. 643 n.
cancellation, its effect on letters, I. 628 n.
pending suit, I. 628 n.
counter security, I. 633 n.
additional security, I. 626 n., 634 n.
action on bond, I. 644 n., 794 n.
by administrator, *d. b. n.*, I. 159 n., 649 n.
leave to sue, I. 646 n.
adjudication in Probate Court, I. 647 n.
statute of Limitations, I. 652 n.

EFFECT OF LETTERS, I. 654—681.
as to what facts conclusive, I. 654—663, 483 n., 561 n., 628 n., 678 n.
in what cases equity will interfere, I. 657, *et seq.*
cases where not conclusive, I. 664, *et seq.*, 483 n., 678 n., *et seq.*
alterations in the law as to the effect of probate on real estate since the Court of Probate Act, I. 665, *et seq.* (*See* PROBATE.)

REVOCATION OF LETTERS, I. 682, *et seq.*
upon citation, I. 682.
upon appeal, I. 682—684. (*See* APPEAL.)
after grant no one may sue as executor until grant is recalled or revoked I. 682.
second grant, without revoking the first, I. 685.
what are sufficient grounds for, I. 686—689, 573 n., 700 n., 694 n.
when granted to next of kin, I. 686.
to one not next of kin, I. 687.
when granted *cum testamento annexo*, I. 687.
re-grant *ad eundem*, I.688.
what are not sufficient grounds for, I. 690, 691.
party in possession of administration not bound to propound his interest, till the other side has established his own, I. 692.
effect of revocation, I. 715, 721 n., 698 n., *et seq.*
where the grant is void, I. 715, 707 n.
voidable, I. 717.
test, whether void or voidable, I. 718, 721 n.
payment to an administrator under a void grant is a discharge, I. 715, 718.
bonâ fide payments under revoked grants, valid, I. 715.
under invalid grants to be protected, I. 716, 718.
abatement of suit under old law, I. 719.
recouping for debts paid, etc., in a course of administration, I. 716, 720.
proper plea by administrator after administration revoked, I. 720.
by Probate Act suggestion to be made on record and suit to continue, I. 719.
exclusive jurisdiction of Probate Court, I. 693 n.
procedure, I. 708 n.
appeal, I. 711 n.
of public administrator, I. 536 n., 700 n.
new appointment before, I. 700 n.
application by whom, I. 102 n., 398 n., 709 n.
resignation, I. 708 n., 713 n.
practice under Judicature Act, I. 719.
no abatement of suit, I. 719.
order to carry on proceedings, I. 719.
after judgment leave to issue execution may be obtained, I. 719.

EXPENSES OF,
in what order payable, II. 186, 187.
land sold for payment of, III. 167 n., 175 n.

STAMP DUTY ON LETTERS, I. 723, *et seq.* (*See* PROBATE DUTY.)

TO SEAMEN AND MARINES, I. 547, *et seq.* (*See* SEAMEN.)

ADMINISTRATION ACTION,
meaning of, III. 611.
commencement of, does not prevent executor aliening assets, II. 128.
decree in, effect of, III. 335 n., 608.
order for sale in, affects conversion of realty, I. 783 n.
sum under £20 will be distributed to next of kin without, II. 740.
in case of foreign assets, III. 105—112.
new practice as to, III. 491, 612, 613, 614.
partial administration, III. 491.
grounds on which court orders general administration, III. 491.
what will bind creditors, III. 492.
order for general administration must be made by judge in person, III. 492.
may be made subject to proviso limiting proceedings under, III. 493.
may be postponed till delivery of accounts, III. 493.
costs of, II. 187, III. 493. (*See* COSTS.)
take priority over those in probate action, III. 639 n.
how commenced, III. 612.
when it may be by originating summons, III. 612. (*See* ORIGINATING SUMMONS.)
proceedings before representation obtained must be by writ, III. 612.
how objection to want of jurisdiction must be taken, III. 613.
notice of intention to raise Statute of Frauds, III. 613.
practice in, III. 613.
when can be brought in County Court, III. 614.
creditor suing on behalf of himself and all other creditors, III. 615.
when he must so sue, III. 615.
staying proceedings in another action, III. 616.
what governing question is, III. 616.
general practice as to, III. 617.
where decree wrongly obtained, III. 617.
conduct of proceedings, III. 617.
transfer of actions where administration order made, III. 617.
creditor's costs after transfer, III. 618.
discretionary transfer to Bankruptcy Court, III. 619.
order for administration cannot be made in absence of personal representative, III. 619. (*See* III. 514 n., 621.)
parties, III. 620—624. (*See* PARTIES.)
what executor liable for under usual administration decree, III. 601.
where on footing of willful default, III. 601, *et seq.*
how creditor may sue for administration of personalty, III. 615, 653 n.
how for administration of realty, III. 616, 653 n.
after decree every creditor deemed before court, III. 622.
until decree plaintiff is *dominus litis*, III. 622.
where personal representative refuses to sue, III. 624.
where creditor entitled to follow assets, III. 624.
procedure on death of one of several co-plaintiffs in a creditor's action, III. 625.
how absent persons may be bound, III. 625, *et seq.*
order for one member of a class to represent others, III. 625.
form of order, III. 626.
indorsement of writ, III. 626.
judgment binding on persons represented, III. 627.
trustees, executors, and administrators may sue and be sued as representing estate, III. 627.
except where they are accounting parties, III. 627.
costs of persons appearing under representation order, III. 627.
who can obtain administration order against executor without serving other persons, III. 627.

ADMINISTRATOR. (*See* ADMINISTRATION—EXECUTOR.)
origin of office of, I. 481.
who are incapable of being, I. 537, 538.
derives his title wholly from the court, I. 481.
cannot take as assignee by purchase, I. 829.
cannot be sued jointly with executor *de son tort*, I. 312.
cannot exist if there be executor, I. 605.
but may be two grants of administration, I. 605.
Power of,

ADMINISTRATOR.—*Continued.*
equal to and with that of an executor, II. 115. But see, III. 324.
co-administrators, to bind their companions, II. 146, 152 n.
survives to his companion if administration granted to more than one, II. 146.
Duties of, II. 165, *et seq.* (*See* EXECUTOR.)
as to distribution under the statute, II. 901, *et seq.* (*See* DISTRIBUTION)
under the customs, II. 929.
as to payment of residue, II. 928.
what may be done by, before letters granted, I. 485, *et seq.* 488 n., 363 n., III. 130 n. (*See* PROBATE.)
he could not commence an action at law, I. 485.
but he might file a bill in Chancery, I. 485.
semble, practice not altered by Judicature Act, I. 485.
a release not binding, I. 485.
assignment not valid, I. 486, 487 n.
instances of relation of letters to death of intestate, I. 486, 487, III. 302.
liable on promise made before letters, III. 301.
if possessed of intestate's goods before letters granted, the court will require him to find security. I. 488.
admissions by, whether binding, III. 467.
Estate of. (*See* ESTATE.)
rights of foreign administrators, I. 505, *et seq.*
legacy to, II. 408, *et seq.*
as such, whether he can in any way take beneficially, II. 417, *et seq.* (*See* III. 121.)
what are assets in his hands, III. 101, *et seq.* (*See* ASSETS.)
Liability of. (*See* EXECUTOR, ACTIONS, REMEDIES.)
with the will annexed, I. 553, *et seq.* (*See* ADMINISTRATION.)
title of, how proved, III. 466.
administrator of executor,
does not represent first testator, I. 293—294.
cannot sue for double value of lands held over, though the tenant has attorned to him, I. 294 n.
administrator *durante minoritate* of executor of executor represents first testator, I. 295 n.
executor of,
who has underlet, his right to rent, II. 119.
he cannot, however distrain, II. 119.
administrator *ad litem,* I. 606—608, III. 622.
may often be dispensed with under O. 16, r. 46, I. 606 n.
administrator *de son tort.*
the law knows no such appellation, I. 312 n.
his agreement as such will not bind him though he subsequently becomes rightful administrator, I. 486. But see III. 302 n.
payments made by him to rightful administrator, after suit for account, not allowed, I. 314.

ADMIRALTY,
its power of disposition of effects of deceased seamen, I. 547, *et seq.* (*See* SEAMEN.)

ADMISSION,
made by executor, etc., before appointment, whether receivable against him as executor, II. 244 n., III. 467.
of one of several executors will not bind the others, II. 154 n., III. 467. (*See* III. 602 n.)
of assets, what is, and the effect of it, III. 603—606. (*See* ASSETS.)

ADOPTION,
will not revoked by, I. 245 n.
as to right to administer, I. 532 n.
"children" does not embrace adopted child, II. 362 n., 431 n.
"heir" embraces adopted child, II. 362 n., 381 n.
of illegitimate child, II. 389 n., II. 913 n.
share of adopted child, II. 886 n.
inheritance from and through adopting parents, II. 913 n.

ADVANCEMENT. (*See* DISTRIBUTION.)
of children by their father,
provision of stat. 22 & 23 Car. II. c. 10, respecting, II. 879, *et seq.*
extends only to advancement by *fathers*, II. 880.
by settlement of land, II. 881.
what is such an advancement, II. 881.
American statutes, II. 889 n., 890 n.
available against distributive share, II. 889 n.
to children, II. 890 n.
to grandchildren, II. 891 n.
to son-in-law, II. 891 n.
refunding of excess, II. 890 n.
election to retain, II. 890 n.
available against legacy, II. 642 n., *et seq.*, 889 n.
direction of will, II. 642 n., *et seq.*, 889 n., 890 n.
charges in testator's books, II. 643 n.
assigns and successors take subject, II. 891 n., 892 n.
so, child substituted for parent, II. 651 n.
what are chargeable, American cases, II. 643—648 n., 890—895 n.
what not, II. 890—895 n., 643—648 n.
intention of testator, II. 896 n.—898 n., 650 n.
valuation of gift, II. 898 n.
interest on value, II. 899 n.
provision of, out of personal estate, II. 882—886.
what is so considered, II. 882—885.
what is not, II. 885—886.
accounting for, in Probate Court, II. 900 n.
in equity II. 900 n., III. 654 n.
enforcing agreement to account, I. 721 n.
barred by statute of limitations, II. 900 n.
out of legacy to infants, II. 730. (*See* MAINTENANCE.)

ADVERSE POSSESSION,
by administrator as heir, II. 52 n.

ADVERTISEMENT,
citation by, when allowed, I. 517.
by executor, effect of on claims of creditor, II. 657, 658, III. 323, 324, 501.
on claims of next of kin, II. 657 n.
what advertisement is proper, III. 501 n.

ADVOWSON. (*See* CHURCH, I. 807, *et seq.*)
executor of grantee of next avoidance of church may grant before probate, I. 364 n.
when chargeable with, as assets, III. 117.

AFFIDAVIT,
of account of personal estate, I. 723, *et seq.* (*See* PROBATE DUTY—ESTATE DUTY.)
form of, I. 728.
where executor or administration out of England as to trust property, I. 744.
executor allowed to verify disbursements by, III. 594.

AFTER-ACQUIRED PROPERTY,
will pass by will executed before, I. 260, *et seq.*, II. 762, *et. seq.* (*See* TIME.)
included in assets, III. 131 n.
included in gift of "all personalty," II. 460 n.
income, III. 131 n.
carried by residuary clause, II. 828 n.

AFTER-BORN CHILD,
right to sue for share, I. 244 n.

AGE,
testamentary, I. 16 n.
in married women, I. 88 n.
(*See* OLD AGE.)

AGENT,
authority of revoked by death of principal, III. 227.
cannot sue executor of his principal in respect of services after his death, III. 226, 227.
responsibility of executor for embezzlement by his agent, III. 134 n., 345—348, 350, 351.
allowance for, II. 196 n., 197 n.
presentment to, II. 240 n.
affidavit to claim by, II. 241 n.

AGRICULTURAL HOLDINGS ACTS,
executors of tenant for life who have paid compensation under entitled to charge on holding for amount, I. 843.
provisions as to property in fixtures erected by tenant, I. 863, 864. (*See* FIXTURES.)

ALIEN. (*See* FOREIGNER—DOMICIL.)
Naturalization Act, 33 & 34 Vict. c. 14. . .9, I. 270.
law before Naturalization Act, I. 12; when still applicable, I. 14 n.
capacity of, to make a will, I. 11.
will must be in conformity with law of his country, I. 14.
may be executor, I. 270.
may be administrator, I. 537, 538 n., 581.
may be a legatee, II. 272.
probate of will of, I. 428, *et seq.*
administration of effects of, I. 505, *et seq.*
distribution of effects of depends on domicil, II. 914, *et seq.*

ALIENATION, (*See* CONDITIONAL LEGACIES.)
restraint on, II. 572 *et seq.*

ALIMONY,
not recoverable if in arrear by the representative of wife, II. 49.

"ALL MY JUST DEBTS,"
meaning of, III. 166.

"ALL WHAT I OWN,"
includes interest in beneficial society, II. 462 n

ALLOWANCE,
of claims.
formal allowance on presentment, II. 247.
statutory reference, III. 362 n.
effect of disallowance on equitable rights, III. 138 n.
foreign disallowance, III. 136 n.

ALLOWANCES. (*See* ACCOUNTS.)
of executor,
for his expenses, II. 193 n., III. 425, 495.
not allowed as a rule on taxation, III. 494.
for his trouble, III. 425—428, 435 n., 443 n.
when entitled to commission, III. 428, *et seq.*
formerly for assets collected in India, III. 430.
still in West Indies, III. 431.
being a solicitor or attorney for his costs for professional business done by him for the benefit of the estate, III. 425—428.
for payments to collectors, etc., II. 196 n., III. 432, 443 n.
to accountant, III. 432.
to an attorney, II. 195 n., III. 432. See III. 495.
for interest for money advanced by him, II. 196 n., 198 n., III. 433.
for insurance, repairs and taxes, II. 196 n., 197 n.
for cultivation of crops, II. 198 n., 196 n.
for procuring surety, I. 633 n.
to administrator *pendente lite*, I. 594 n., III. 442 n
temporary administrator, I. 611 n.

ALLOWANCES.—*Continued.*
testamentary trustees, III. 442 n.
fixed by statute, III. 436 n.
by will, III. 436 n.
by agreement, III. 437 n.
by court, III. 437 n.
reviewed in equity, III. 656 n.
sale of lands for, III. 167 n.
payable when, III. 444 n.
out of what fund, III. 445 n.
what estate reckoned as basis, III. 438 n.
specific legacies, III. 439 n.
advancements, III. 439 n.
foreign assets, III. 439 n.
land, III. 440 n.
division between co-executors, III. 440 n.
successive administrators, III. 441 n.
in double capacity, III. 442 n.
forfeiture of, III. 446 n.
receiving money to which he is not entitled, must refund, though he has paid it away to creditors, III. 433.
what an executor may be charged with under a reference of just allowances, III. 434, 494.
when he may be charged on footing of willful default, III. 435.
in the Probate Court, III. 663.
of payments made to creditors after a bill filed for administration of assets, II. 257.
for support of family, II. 865 n.
subject of devastavit , III. 376 n.

ALTERATIONS,
in a will. (*See* EVIDENCE—OMISSION—PROBATE, *manner of obtaining*—WILL, *revocation of.*)
at what time presumed to have been made, I. 185—187, 160 n.
revocation by, I. 183, *et seq.*, 195, *et seq.*
probate in common form of will exhibiting, how granted, I. 389—390 n.
evidence as to, I. 390.
attestation of, I. 196 n.

AMBIGUITY. (*See* CONSTRUCTION—LEGATEE.)
upon the *factum*, I. 416.
what it is, I. 417, 418.
parol evidence to explain, I. 417.
on the face of a will,
when evidence admissible to explain I. 420, 421, II. 374 n. II. 426, *et seq.*

ANCILLARY PROBATE, I. 436 *et seq.*, III. 108, *et seq.* (*See* ASSETS—DOMICIL—FOREIGNER—PROBATE.)

ANCILLARY LETTERS,
not granted in jurisdiction of domicil, I. 354 n.
grant in other jurisdictions, I. 430 n.
on proof of local assets, I. 436 n.
foreign probate, I. 412 n., 612 n.
presumption of validity of foreign will and probate, I. 444 n., 612 n.
to foreign executor, I. 444 n., 612 n.
one person in several jurisdictions, III. 135 n.
liability of surety, III. 135 n.
non-resident, I. 702 n.
bond, I. 632 n.
powers for collection of assets, I. 443 n.
sale of lands, I. 612 n.
payment of debts, I. 443 n.
distribution, I. 443 n., III. 137 n.
transmission of funds, I. 443 n., III. 135 n.
accounting, I. 428 n., 612 n., II. 926 n., III. 136 n.

"AND,"
the word construed "or" in a will, II. 335 n. (*See* II. 393.)

ANIMALS,
what pass to executor, what to heir, I. 830—832.
Society for Protection of from Vivisection is a charitv, II. 303.

ANIMUS REVOCANDI,
(*See* WILL, REVOCATION.)

ANIMUS TESTANDI,
will must be made with, I. 151 n.
onus of proof of, I. 153.
will made in jest, I. 151 n.

ANNUITY,
definition of, II. 35.
not a chose in action, but an interest in equity, II. 1 n.
when it goes to the heir, and not the executor, II. 35.
question, whether real or personal estate, II. 35, 36.
apportionment of, II. 44, 49 n., 481 n., *et seq.*
quære whether a contingent debt in whole or in part till payable, II. 220 n.
what passes by the bequest of an "annuity," II. 478—486.
whether perpetual or for life, II. 486.
bequest to purchase for legatee, II. 485.
rights of legatee, II. 486.
given by will,
the first payment shall be made at the expiration of the year next after testator's death, II. 694, 695, 754 n.
interest on, II. 743. See too, II. 695.
takes precedence over residuary gift, II. 662, 663, 664.
whether payable out of the capital of testator's estate, II. 664 n.
has no preference in abatement over general legacies, II. 672.
exception to this rule, II. 672 n.
compelling appropriation of sum by executor to secure payment, II. 714.
who is to sustain the loss consequent on any failure of the fund appropriated, II. 715.
value of, how ascertained for purposes of legacy duty, III. 12—14.
personal, not within stat. 3 & 4 Wm. IV. c. 27, s. 42. . . III. 631 n.
where not in arrear annuitant cannot apply for administration, III. 612.

ANTENUPTIAL SETTLEMENT. (*See* HUSBAND AND WIFE.)
of money, jewels, etc., by the husband, I. 873.
agreement in writing, I. 874.

ANTICIPATION,
property of a married woman with a restraint on, cannot give rise to an election, II. 769.

APPEAL,
respecting grants of probate or letters of administration, I. 682, *et seq.*, 711 n.
suspends the former sentence, I. 717, 593 n.
to what court formerly, I. 683, 684.
now from Probate Division to Court of Appeal, I. 684.
time within which must be brought, I. 685.
notice of when to be given, I. 685.
from equitable jurisdiction of County Court, III. 672.
from order of sale, I. 593 n., II. 138 n.
from ancillary appointment, I. 612 n.
from allowance of predecessor's account, II. 162 n.

APPOINTMENT. (*See* POWER.)
what the court will do, if no exercise of power of selection, II. 394.
resulting trust on failure of, II. 805 n.

APPORTIONMENT,
under 33 & 34 Vict. c. 35 . . . II. 43—46.
of rent, II. 43, 50 n., 481 n.
of annuities, II. 43, 49 n., 481 n.
whether annuity a contingent debt till day of payment, *quære*, II. 220 n.
of dividends, II. 43, 50 n.
of other periodical payments, II. 44 n.
of a bonus, II. 44 n.
interpretation of terms, II. 45, 46.
when apportioned part payable, II. 44.
remedies for recovery of, II. 45.
whether Act retrospective, II. 46 n.
Act not to apply to policies of assurance, II. 46.
nor where stipulation to contrary, II. 46.

APPRAISEMENT,
of assets, II. 181 n. (*See* INVENTORY

APPRENTICE,
executor of master has no interest in, II. 38—40. (*See* II. 3 n.)
provisions as to parish apprentices by stat. 32 Geo. III., II. 39.
not liable on covenant to instruct the apprentice, III. 226, 270.
secus, as to maintenance, III. 270, 22 n.
but a magistrate cannot order it, III. 270 n.
profits from labor of, assets, III. 104.

APPROPRIATION. (*See* ASSENT.)
of testator's property in satisfaction of claims of executor or administrator, I. 772—774.
of legacies payable *in futuro*,
doctrine of, II. 712—716.
suggestion of insolvency of executor, or of a *devastavit*, not necessary to compel, II. 712.
where a certain sum of money is given on a contingency, II. 713.
who must bear the losses or enjoy the profits incident to, II. 714, III. 337 n.
costs of a suit to secure legacy to an infant, II. 719.
to secure bequest of annuity, II. 714.
of legacy where the amount of the testator's debts is contingent, II. 716.
of assets to legacy prevents exercise of right of retainer for debt to estate, II. 684 n.

ARBITRATION,
when executor may proceed on submission by testator, II. 98.
when award made after testator's death valid, 11. 98.
cannot be enforced by attachment, II. 98 n., III. 555.
effect of submitting title to wife's term to, by husband in cases outside Married Women's Property Act, 1882 . . . I. 822, 823.
wife's choses in action in like cases, II. 67.
when executor liable *as such* on a promise to pay the sum awarded, III. 288.
when *personally* liable on a submission, III. 299—301, 325.
stat. 44 & 45 Vict. c. 41; executors may compound and refer to arbitration. III. 325.
old law apparently still applies to *administrators*, III. 324, 325—327.
American law as to executors, II. 252 n., III. 362 n., 558 n.
no admission of assets, II. 252 n.
action on award, II. 22 n.
arbitration bond, II. 86 n., 252 n.

ARCHBISHOP,
his options passed to his executor, I. 809.
what his options were, I. 809.
now obsolete, I. 809 n.

ARCHES,
court of, I. 683 n.

ARMOUR,
of deceased set up in a church an heirloom, I. 846.

ARMS,
exemplification of grant of whether an heirloom, I. 846 n.

ARREARS. (*See* APPORTIONMENT—RENT.)
of rent, pass to executor in all cases, II. 42, *et seq.*
of interest will not pass by the bequest of the debt, II. 488.
nor the debt by a bequest of the arrears, II. 488.
of pin money will not pass to wife's executor, II. 49.
nor of alimony, II. 49.

ARREST,
abolition of, for debt by "Debtors Act, 1869," III. 637.
when defendant may be arrested on affidavit by plaintiff that he intends leaving England, III. 637.
practice as to, III. 637.
defaulting trustee not protected from arrest by Debtors Act, III. 638.

ARTICHOKES,
whether they go to executor, I. 836 n.

"ASCERTAINED,"
word construed "made certain," II. 337.

ASCERTAINMENT,
of a class period of, II. 340, *et seq.*

ASSAULT,
action for, does not survive to executor, II. 4, 6, 28 n.
nor against him, III. 228.

ASSENT,
of executor to legacy, 11. 677, *et seq.*
necessity of, to complete legatee's title, II. 677.
although testator direct him to take possession without, II. 678.
where a testator forgives a debt, II. 678.
to bequest of government stock, II. 678, 679.
if legatee takes the legacy without assent, the executor may have trover, II. 679.
if executor refuse without a cause, he may be compelled in equity to assent, II. 679.
the legatee has a transmissible right without assent, II. 678.
what shall constitute, II. 677—683.
not essential for its efficacy that it should confer a legal interest, II. 689.
presumed assent, II. 682.
conditional assent, II. 682.
by whom, II. 683.
effect of, II. 684.
after, action lies against executor or a specific legacy, II. 684.
in what cases it may be retracted, II. 684.
relation of, to death of testator, II. 685.
where he is one of several executors, II. 144.
executor's assent to his own legacy, I. 774, II. 685.
in case he dies without proving the will, I. 365.
necessity of, II. 685.
when implied, II. 685, 686.
effect of entry by executor when a term of years is bequeathed to him, II. 687.
taking possession of chattels bequeathed to him for life, II. 690.
when he renounces probate, II. 690.
when he is one of several executors, II. 144, II. 690.

ASSETS. (*See* DEVASTAVIT—ESTATE—EXECUTOR, *power of.*)
meaning of the term, III. 100.
following assets, II. 120, 121, 656, III. 606, 624.
what are *legal* assets in the hands of an executor or administrator, III. 101, *et seq.*
of an executor of an executor, I. 767, 768, 294 n.
assets which were not in testator, III. 101, *ibid*, n.
by contract, III. 102.
lease renewed by executor, III. 101.
by remainder, III. 102.
by increase, III. 102, 131 n.
young of cattle, III. 102.
profits of land demised, III. 102.
profits of trade, III. 103, 398—402.
good will, III. 103 n . 131 n.
profits of share in a newspaper, III. 103.
profits of physical nostrums, III. 103.
profits arising from the labor of apprentices, III. 104.
by condition, III. 104.
things pledged by testator, III. 105, 138 n.
insurance and pension moneys, III. 131 n.
copyrights and licenses, III. 131 n.
after acquired property, III. 131 n.
choses in action, III. 131 n.
partnership settlement, III. 131 n.
debts of personal representative, II. 624 n., III. 132 n.
not in hands of successor, II. 113 n.
damages for death of decedent, II. 34 n.
condemnation of lands, II. 24 n.
property ineffectually transferred, III. 130 n.
not property of other persons, III. 130 n.
held jointly, III. 130 n.
in partnership, III. 130 n.
property of testator, wherever situate, III. 105—112.
whether court here will administer foreign assets, III. 103, *et seq.*
foreign assets will be administered according to *lex domicilii*, but priority of creditors settled by *lex fori*, III. 111, 112.
an executor may sue here, in respect of foreign assets, without foreign probate, I. 438.
foreign assets, II. 181 n., III. 133 n.
subject to foreign creditors, I. 444 n., III. 136 n.
transfer of, III. 134 n.
voting on stock, III. 135 n.
bequest for life with power of appointment, III. 139 n.
transmission to domestic jurisdiction, I. 443 n., III. 135 n., 136 n.
ordered by court, where custodian is within jurisdiction, III. 137 n.
leasehold in Ireland, III. 106 n.
stock in foreign funds, III. 106.
chattel interest in lands by law of foreign countries, III. 106 n.
lands and houses, etc., in the plantations, III. 112.
real estate in India, III. 114.
next avoidance of a church, not assets, III. 117.
damages recovered on *quare impedit*, III. 117, 118.
office for years, III. 118.
estates *pur auter vie*, III. 118—120.
of any person who shall die after 1st Jan., 1838, under 1 Vict. c. 26... III. 120.
property to which executor is entitled as *persona designata*, II. 408, 417, *et seq.*, III. 121.
property in testator as trustee, III. 121, 137 n.
effect of Conveyancing Act, 1881...III. 122.
promissory note to testator which he declared he would not enforce, III. 121 n.
terms attendant on inheritance, III. 122.
fund for specific purpose not general assets, III. 123.
if executor dies, the assets are not liable to his debts, I. 767, 768, *ibid.*, n.
property assigned in fraud of creditors, III. 124, 130 n.

ASSETS.—*Continued.*
what assets shall be considered as *come to hand*, so as to charge the executor, III. 114—117, 525 n. But see III. 331—333.
what are *equitable* assets in the hands of an executor, III. 124.
distinction between legal and equitable assets, III. 124, 138 n.
equity of redemption, III. 126.
proceeds of sale of real estate, III. 127.
assets partly legal and partly equitable, III. 127.
beneficial interest under a power, III. 128, 129 n., 139 n.
term of years which has merged by the executors purchasing the reversion, I. 769.
real assets in the hands of the heir or devisee, III. 140, *et seq.*
stat. 1 Will. IV. c. 47...III. 141—144.
stat. 3 & 4 Will. IV. c. 104...III. 144—146.
sale of lands by Probate Court, III. 167 n., *et seq.*
power to lease, III. 167 n., 181 n., 183 n.
mortgage, III. 167 n., 183 n.
have possession, III. 181 n.
charge of debts and legacies, III. 190 n., *et seq.*
power of sale, III. 203 n.
agreement for purchase, III. 139 n.
rents, II. 50 n., III. 181 n.
injury to rental value, II. 53 n.
heir or devisee personally liable as well as land, III. 146.
exoneration of III. 147 *et seq.*, 185 n. (*See* EXONERATION.)
of marshalling the assets, III. 209, *et seq.*
in favor of creditors, III. 209, 210, 219 n.
in favor of legatees, III. 210—214, 220 n.
in favor of widow in respect of her paraphernalia, I. 183, III. 215.
assets not marshalled in favor of charitable bequests, III. 213.
order in which applied in payment of debts, III. 214, 215.
admission of,
effect of, III. 594, 603.
what amounts to, III. 538 *et seq.*, 594, 603, 604. (*See* also II. 229, III. 534.)
executor cannot purchase from himself, II. 125, III. 401. (*See* III. 105.)
how the effects which an executor takes as such may become his own, I. 772, III. 105; but see I. 773 n.
power of executor to alien, I. 770, II. 124, *et seq.*
when they may be followed, II. 120, 656, III. 606, 624.
proof of, under plea of *plene administravit*, III. 538, *et seq.*
when a sufficient consideration to charge an executor personally on his own promise, III. 297.
suit in equity for discovery of, III. 588.

ASSIGNEE. (*See* BANKRUPT.)
administrator cannot take as, by purchase, I. 829.
when executors and administrators take by contract as assigns, II. 3, 83, 84.
on contract to be performed on day which happens after testator's death, II. 83, 84.
executor of lessee sued as, for rent incurred after testator's death III. 256, *et seq.*
for dilapidations, III. 262, 263.
not liable as, after assignment of lease by himself, III. 262.
when he may proceed by originating summons, III. 487.
of creditor, payment to, II. 225 n.
presentment by, II. 240 n.
of legatee, set off against, II. 621 n.

ASSIGNMENT. (*See* EXECUTOR, ADMINISTRATION.)
of trust term, limited administration for, I. 605.
power of administrators as to assignment of deceased's property, I. 583, 595.
of lease, by executors, when restrained by condition not to assign, II. 126.
its effect on the liability of executor of lessee to pay rent after testator's death, III. 262.

ASSUMPSIT. (*See* TORTS.)
lies for executor for damage in testator's time, II. 12, 17, 18, 20.
for damage in his own, II. 78.
for copyholder's fine, II. 46.
lies against executor for wrongs of testator, III. 230.

ASSURANCE,
power of executors of assurer to re-assure, II. 130.
of assured to procure endorsement of policy against fire, II. 130.

"AT THEIR DEATH,"
construed "at the death of each respectively," II. 337.

ATTACHMENT,
when the court will order to issue against person disobeying its orders, I. 374 n., 722 n., 358 n., III. 133 n., 363 n., 586 n.
of debt due to estate of executor under stat. 17 & 18 Vict. c. 125, s. 41... III. 547 n.
defaulting executor becoming bankrupt not liable to, III. 608.
against wife executrix, III. 636.
of legacy, III. 654 n.
of specific legacy, II. 438 n.
of partnership property, for debt of survivor, I. 793 n.
against non-resident executor, III. 587 n.
liability of deceased garnishee does not require presentment, II. 237 n.

ATTAINTED PERSONS,
may sue as executors, I. 273.
goods of deceased not forfeited by executor's attainder, I. 765.

ATTESTATION. (*See* WILL, *form and manner of making*, WITNESSES.)
in case of wills of personalty made before Jan. 1, 1838...I. 115 n.
of all wills made on or after Jan 1, 1838...I. 115—147.
no form necessary but desirable, I. 133.
clause no part of will, I. 133, 134 n.
of holographic wills, I. 97 n., 148 n., II. 281 n.
of nuncupative wills, I. 116 n., 168 n., II. 281 n.

ATTORNEY. (*See* COSTS, SOLICITOR.)
grant of letters of administration to, I. 514, 559.
of next of kin, I. 514.
functions and liabilities, I. 515.
sureties to the bond, I. 515. (And *see* I. 619, 621.)
authority to attorney to apply for, I. 514.
to attorney of executor, I. 559.
consequences of such administration, I. 559.
does not break chain of representation, I. 559.
revocation and termination of, I. 559.
form of, I. 559. (*See* also, I. 598.)
of executor, grant of administration to, *durante absentiâ* of the executor, I. 598 n.
effect of return of executor, I. 559, Cf. I. 598.
authority of, is determined by the death of client, II. 98, 99.
power of,
executor making payments under, not liable by reason of the death of party giving it, stat. 22 & 23 Vict. c. 35, s. 26...II. 99.
given by executor, his liability for acts done under, III. 301.
executor cannot exercise a power of sale by, II. 130.
warrant of, where executor may enter judgment upon, II. 97, III. 555.

ATTORNEY-GENERAL,
cannot sue for executors misconduct, III. 557 n.

AUDITA QUERELA,
relief by, when executor obtained judgment, and then the probate was revoked, III. 469. (*See* I. 715, *et seq.*)
abolished by Judicature Acts, III. 469.
application for stay of execution now the proper proceeding, III. 469.

AUNT,
her degree as next of kin, II. 905.
grandfather preferred to her, I. 500, II. 905.
great-grandfather shall share with her in distribution, II. 905.
so shall nephews and nieces, II. 905.

AUTER VIE. (*See* ESTATE PUR AUTER VIE.)

AUTHOR,
undertaking to write a work and dying before completion, his executor not liable, III. 225.

AVOWRY,
by executor of underlessee,
for rent accrued since testator's death,
must state the quantity of the testator's estate, II. 41.

AWARD. (*See* ARBITRATION.)

BAIL BOND,
executor of assignee of, may bring an action upon it, II. 3.

BANK OF ENGLAND. (*See* STOCK.)
bonus given by, passes to legatee of capital, II. 765.
bound to obey vesting orders, III. 599.
bound to recognize executor's right to stock of deceased, II. 38 n.

BANKER,
method of taking partnership accounts in case of, between deceased and surviving partners, I. 777 n.
loss by failure of,
when executor liable for, III. 346—348.
provisions of Trustee Act 1888 . . . III. 351.

BANK NOTES,
when they pass by a bequest of "effects," "goods," etc., II. 459, 462.
of "money," II. 472.

BANKRUPT. (*See* BANKRUPTCY.)
appointed executor,
probate must be granted to, I. 275, 452.
control of, by appointing a receiver, I. 275.
by requiring security, I. 275, 452.
receiver will not be appointed if testator knew executor to be, I. 276.
assignees of, will be restrained, on petition in the bankruptcy, from paying over the fund to him, I. 275 n.
propounding a will must find security for costs, I. 452.
cannot be appointed administrator, I. 537. (*See* also, I. 504.)
executor becoming bankrupt,
the goods of the testator do not pass, I. 765, 766.
what are goods within "reputed ownership" clause, I. 766 n.
receiver appointed, to whom assignees shall account, I. 767.
forfeiture of lease, in case lessee or his executor shall become bankrupt, I. 766.
where he is residuary legatee, I. 767.
specific legacy to, not exclusively applicable to make good *devastavit*, III. 607.
guilty of *devastavit* cannot prove under his own bankruptcy without an order, III. 607.
his co-executor may, III. 607 n.
dividends should not be allowed to come to his hands, III. 607
from what time debt on *devastavit* due, III. 607.
when protected from attachment, III. 608.
costs of defaulting executor becoming bankrupt III. 641—644.
when bankrupt executor discharged, III. 642.

BANKRUPT.—*Continued.*
by carrying on the trade of testator, III. 305.
how far the assets liable, III. 310.
plea by executor of bankruptcy, III. 522.
executor of,
not entitled to his *choses in action*, II. 49.
can maintain trover against every one but assignee, I. 763.
official assignee administrator of, not allowed to dispense with justifying securities, I. 619 n.
legatee.
to whom the interest in the legacy belongs, II. 270, 577.
condition as to legatee becoming bankrupt, II. 577.
when executor may retain or set off against bankrupt legatee for debt to estate, II. 622, 623.
when executor may set off debt of husband against the legacy, etc., to the wife, II. 623.

BANKRUPTCY. (*See* BANKRUPT.)
notice, when executor entitled to issue, III. 469 n.
trustee in, husband's right to administer to wife does not pass to, I. 491.
when executor authorized to trade with firm that becomes bankrupt, he cannot prove against the estate, III. 305 n.
administration of insolvent estate may be in on petition by creditor, II. 193 n., III. 619.
no action against executor where estate insolvent, II. 254 n.
gift over on, II. 576 n., 577 n. (*See* CONDITIONAL LEGACIES.)

BANKRUPTCY RULES,
certain of to prevail in the administration by the Court of an insufficient estate, II. 193 n., 264 n.

BARRISTER,
drafting will under which he benefits, I. 657 n. (*See* BENEFICIARY.)

BASTARD,
administration of effects of, I. 509.
right of Crown when dying intestate without children, I. 509, 510 n.
distribution of effects of, II. 908.
where members of certain societies, distribution of effects on intestacy as if legitimate, I. 552.
capability of taking as legatee, II. 364, 365 n.
under the description of "child," II. 364—370, 371 n., 389 n.
liability of personal representative of mother of, III. 234.
not a child within Lord Campbell's Act, II. 9 n.
legitimate by law of father's domicil entitled under Stat. of Distributions, II. 914 n. (*See* II. 922 n., III. 46 n.)
or under gift to children, II. 369
no right to administration, I. 709 n.
revocation of will in favor of, I. 238 n
for omission of, I. 245 n.
adoption of, II. 389 n
not included in next of kin, II. 399 n.
descendants, II. 513 n.

BEDS,
when they are heir-looms, I. 844.

BEES,
when they pass to an executor, I. 831 n.
are the subject of larceny, *ibid.*

BENEFICE. (*See* CHURCH.)
distinction between donative and presentative, I. 808, 809.

BENEFICIARY,
drawing will in his own favor, I. 162—167, 412 n., 413, 657 n., 662 n., III. 645.

BENEVOLENCE,
object of, not charitable II. 311 n.

BILL IN EQUITY. (*See* ADMINISTRATION ACTION, ORIGINATING SUMMONS REMEDIES.)

BILL OF EXCHANGE. (*See* PROMISSORY NOTE.)
given to *feme covert*,
dum sola, II. 56.
during coverture, II. 56.
discounting by one of several executors out of testator's money will not enable executor to sue with co-executor as indorsee for value, I. 774.
given or indorsed to executor, as such, he may sue upon it as executor, II. 80, 81.
indorsed to administrator after testator's death, II. 80.
power of executor to indorse, II. 129.
whether one of several executors of holder of can indorse, II. 143.
whether one of several administrators, II. 146 n.
not due till after testator's death, executor liable upon, III. 224.
made payable at a time certain after the death of the testator bears interest from date, III. 278, 279.
when executor personally liable upon III. 296.
executor indorsing personally liable, III. 296 n.
unless he indorse in representative character, II. 129 n., III. 296 n.
presentment of, by executor, etc., III. 469.
whether delay excusable in such case, III. 470 n.
to executor, etc., III. 556.
notice of dishonor to executor, etc., of drawer or indorser, III. 556.
when drawee dead may be treated as dishonored or presentment made to executor, II. 129.
where presentment to be made in such cases, II. 129.
given by a stranger for debt of one deceased, I. 307 n.
effect of holder making acceptor executor, III. 449, *ibid.*, n.
by what words bill will pass to a legatee, II. 459, *et seq.*
how an executor should declare upon it, if he intends to rely on a promise to himself to bar the statute of limitations, III. 459.
non assumpsit a good plea, III. 459, 460.

BILL OF EXCEPTIONS.
sci. fa. against executors of judge to certify, III. 277.
abolished by the Judicature Acts, III. 277 n.

BILLS OF SALE ACTS,
when growing crops within, I. 835 n.
BIRDS,
when they pass to executor, I. 831, 832.

BISHOP. (*See* ORDINARY.)
executor of has no right to present to vacant benefices, where advowson part of temporalities, I. 808.

BLANK SPACES,
in *the body* of a will unobjectionable, I. 113.
court of construction will fill up, II. 429—431. (*See* I. 422 n., II. 835, 492 n., AND CONSTRUCTION, EVIDENCE.)
by reference to original will, II. 429 n.

BLIND,
capacity of, to make a will, I. 19, 20.
will of,
must be read to testator, and acknowledged by him before witnesses, I. 19, 414.
acknowledgment without reading over insufficient, I. 19.
need not be read before *subscribing* witnesses, I. 19.
single oath of writer sufficient, I. 20.
where testator is, attestation of will, I. 131, 132.
probate of, I. 414.

BONA NOTABILIA,
archbishop's prerogative under the old law, where the deceased left *bona notabilia* in another diocese than that wherein he died, I. 337, 338.
abolished by the Probate Act, I. 339.

BOND. (*See* REFUNDING BOND.)
lost may be put in suit, III. 332 n.
executor liable upon bond of testator though not named, III. 224.
though not due till after his death, III. 224, 225.
when liable on a joint bond, III. 240.
joint and several what words constitute, III. 243 n. (*See* III. 240 n.)
executor paying interest on does not admit assets, III. 540, 541.
to feme covert,
given *dum sola*, II. 56.
to husband and wife during coverture, II. 56, 57.
to wife alone during coverture, II. 56.
Scotch heritable descends to heir, II. 2 n.
heir not put to election as to, II. 770.
to executor,
he cannot sue upon, as executor, II. 81.
as security for loan of assets to his fellow executor, may sue on, II. 151.
administrator's bond, I. 613, *et seq.* (*See* ADMINISTRATON.)
stat. 22 & 23 Car. II., I. 613.
repealed by Court of Probate Act, I. 614.
bond debt,
its rank as to payment by executor, II. 217.
when executor co-obligor, can retain, II. 265.
joint bond, III. 240, *et seq.*
co-obligor having paid the bond not a specialty creditor, II. 265 n.
but surety to the Crown who has paid the debt is entitled to Crown's priority, II. 265 n.
voluntary bond, II. 217, 218.
usurious bond, or *ex turpi causâ*, II. 218.
bond for payment of money at a future day, II. 218.
on a contingency, II. 219, *et seq.*
if the obligee makes the obligor his executor the debt is released, II. 625.
co-obligor appointed executor, II. 625.
effect of the obligor making the obligee his executor, II. 629.
when it does or when it does not pass under the bequest of "goods," or like words, II. 459, *et seq.*
what will pass under words "bonds and securities," II. 477.
bequest of debt due on, does not pass arrears of interest, II. 488.
for partnership assets, III. 131 n.

BONUS,
when legatee of stock entitled to, II. 765.

BOOKS,
what passes by bequest of, II. 489.
what words will pass, II. 469, 470.
legacy of, to body corporate not liable to duty, III. 82.
partnership account books go to surviving partner, I 793 n.

BOOKSELLER,
executor of, bound to continue a work published in parts, III. 82.

BOROUGH-ENGLISH,
land descending in not considered an advancement, II. 881.

BREACH OF PROMISE,
action for does not pass to executor, II. 26 n.

BREWING UTENSILS. (*See* FIXTURES.)
when they pass by devise of the brewhouse, I. 859.

BRIEFS,
money collected on for charity, whether it goes to executor, II. 46.

BROKER,
liability of executor for default of, III. 345—351.

BROTHERS AND SISTERS,
preferred in decree of kindred to grandfather, I. 501, II. 903—904.
of half blood fully entitled, I. 500, 503, II. 903—904.
of intestate, shall share in distribution with their mother, II. 901—903.
though the intestate left a widow, II. 901.
children of,
when they shall share in distribution with the intestate's mother, II. 901, 902.
when they take *per capita*, and when *per stirpes*, II. 907.
representatives of,
not allowed beyond children of brothers and sisters of intestate, II. 842, 901, 906.
not to share with intestate's mother, II. 902.
legacy to, excludes half blood, II. 332 n.
excludes their children, II. 343 n., 395 n.
excludes those already dead, II. 340 n.
"surviving brethren" includes sisters, II. 374 n.

BUILDING ACT,
liability of executors under, III. 264.

BUILDING SOCIETY.
when representation not necessary to members of, I. 551.

BUSINESS,
of decedent,
carried on by executor, III. 315 n.
partnership,
continued by executor, III. 317 n.
administered by surviving partner, III. 316 n.

BUST,
by what words it will pass in a will, II. 469 n.

CÆTERORUM GRANT. (*See* HUSBAND AND WIFE, ADMINISTRATION *temporary and limited.*)
in case of feme covert, I. 464, 465, 494.
in general cases, I. 465, 609, 610.
in case of person dying without next of kin partially intestate, I. 510.

CAMPBELL'S, LORD, ACT, II. 8, *et seq.* (*See* ACTION, TORTS.)
action under, does not bar other rights of action, II. 11, 12.
though no action brought under, Chancery Division has power to apportion compensation money, II. 10 n.

CANAL SHARES,
whether real or personal property, II. 36.

CANCELLATION,
of wills, I. 161 n., 183 n., 185 *et seq.*, 201 n. (*See* WILL, *revocation of*, ALTERATION.)
onus showing to be the act of the testator on those who oppose the will, I. 210.

CAPITA, PER. (*See* PER CAPITA.)

CAPITAL,
when gift of income passes, II. 478.
when gift of income vests, II. 527—533, 542, 543.
and income,
rules for determining in case of wasting securities, II. 698 n., 701 n., 702 n., 703 n.
how debts should be paid in reference to, II. 703 n.

CAROOME,
whether it passes to executor, II. 40.

CARRIER,
action of *assumpsit* will lie against executor of, III. 230.

CARROTS,
whether they go to executor, I. 836 n.

CASH,
bequest of, II. 473 n.

CATTLE,
young of,
assets in hands of executors, III. 102.
fallen since death of testator, pass to specific legatee of the parent, II. 741.
what passes by bequest of a flock of sheep, II. 763.
included in farm stock, I. 471 n.
milk, lambs and wool to be accounted for, I. 832 n.

CAVEAT,
entry of, in probate court, I. 689.
jurisdiction on, II. 352 n.
in name of infant, I. 397 n.
who may contest, I. 397 n.
defend, I. 398 n.

CERTIORARI,
where it lies for an executor, II. 96.
to remove a presentment or coroner's inquest of *felo de se*, II. 96 n.
where it lies against executor of judicial officer, III. 277.
for revision of probate, I. 692 n.

CESTUI QUE TRUST,
may proceed by originating summons, III. 487.

CHAIN OF REPRESENTATION. (*See* EXECUTOR OF EXECUTOR.)
what it is, I. 293.
when broken, I. 297.

CHAMBERLAIN OF LONDON. (*See* ORPHANS.)

CHANCERY DIVISION
of High Court of Justice, whether it has jurisdiction to grant probate, I. 343, 344.
or to revoke probate, I. 682 n.
will not appoint a receiver if administration *pendente lite* might be obtained, I. 591.
proceedings in. (*See* ACTION, ADMINISTRATION ACTION, ORIGINATING SUMMONS, PARTIES, REMEDIES.)
transfer of administration action to, from County Court, III. 668.
transfer of administration actions from, to County Court, III. 614, 668.
transfer of administration actions from, to Bankruptcy, II. 200, n. (*v*), III. 619.
transfer of actions against executors to, after administration order, III. 617.

CHARGE. (*See* EXONERATION.)
of debts on land, where it gives executors an implied power of sale, stat. 22 & 23 Vict. c. 35, s. 14, I. 780 n., 781. (*See* ESTATE, *Quantity in Possession.*)
what shall be sufficient to charge the real estate with debts and legacies, I. 782, III. 159 n., 190 n., *et seq.*
lands discharged, III. 200 n.
by lapse of legacy, II. 497 n.
of administration expenses, II. 194 n.
of debt, by devise to debtor, II. 618 n.
personal liability, II. 558 n., III. 202 n.
enforcement against land, III. 198 n.
in hands of purchaser, III. 199 n.

CHARGES AND EXPENSES,
what allowed to executor, III. 425, 494, 644. (*See* ALLOWANCES.)
should be included in executor's accounts and not in his bill of costs, III. 494.

CHARITABLE USES,
bequest to, II. 282, *et seq.* (*See* II. 396.)
stat. 51 & 52 Vict. c. 42 amends and consolidates Mortmain Acts, II. 285.
provisions of, II. 284—290.
to what sort of property Mortmain Acts apply, II. 291—293.
to what sort of property they do not apply, II. 292—295.
to what sort of bequests they apply, II. 295—298.
bequests with a discretionary power to executors to lay out in land or otherwise, II. 296, *et seq.*
covenant to invest upon charitable trusts, II. 298.
does not apply to a devise by a freeman of London, II. 298.
what are uses within the Acts, II. 298—310.
exceptions to the statute, as to the Universities, II. 309.
as to land in Scotland, II. 309.
bequests of land in Ireland or the colonies, II. 309.
of proceeds of land to be laid out in Scotland, II. 310.
duty on gifts to, III. 49, 80, 81.
cases of bequests to legatees, accompanied by bequests to charity, II. 310.
gift over if the previous gift should be void under the statute, II. 311.
on whom void bequests devolve, II. 311.
cy-près doctrine, II. 312. (*See* II. 283, 313 n.)
indefinite bequests for benevolent purposes, etc., II. 312, 317.
tat. 54 & 55 Vict. c. 73, alters 51 & 52 Vict. c. 42... II. 324.
applies only where testator dies after passing of Act, II. 326.
amends definition of "land," II. 324.
land assured by will to charitable use to be sold, II. 325.
personal estate to be laid out in land not to be so applied, II. 325, 326.
power to retain land under certain conditions, II. 326.
assets not marshalled in favor of, III. 213, *ibid.*, n. (*q*).
legacy to, not entitled to priority of payment, II. 671, 672.
payment into court of money held in trust for, III. 498.
American application of English statutes,
of charitable uses, II. 299 n.
superstitious uses, II. 282 n.
Mortmain, II. 285 n.
American statutes of Mortmain, II. 285 n.
restricting gifts to charities, II. 286 n.
to churches and schools, III. 301 n.
charitable uses in the United States:
for the relief of the poor, II. 302 n.
private benevolence, III. 303 n.
"benevolence" not charity, III. 311 n.
for education and religion, II. 304 n.
for public uses, II. 307 n.
on the footing of other trusts in New York, II. 300 n.
indefinite gifts, II. 312 n.
to be selected by executors, II 318 n.
no sufficient trustee, II. 320 n., 322 n.
to unincorporated society, II. 321 n.
misnomer of beneficiary, II. 321 n.
uncertainty of beneficiary, II. 323 n.
perpetuity rules do not apply, II. 325 n.

CHARTERS,
belonging to inheritance, do not pass to executor, I. 847.
nor the box in which they are kept, I. 847.

CHATTELS PERSONAL. (*See* ESTATE.)
definition of, I. 830.
what passes by bequest of, II. 459.
animate, I. 830, *et seq.*
vegetable, I. 833, *et seq.*
inanimate, I. 844, *et seq.*

CHATTELS REAL. (*See* ESTATE, QUANTITY IN POSSESSION.)
pass to executor, I. 807, *et seq.*
definition of, I. 807.
what passes by description of, II. 423, 424.
executor not deemed in possession of, before entry, I. 764.
whether action for tort to, survives, II. 8 n. (*See* ACTION, TORT.)
of wife. (*See* HUSBAND AND WIFE.)
the right of husband's executor to, I. 820, 822, *et seq.*
the right of wife's administrator to, I. 820, 825.
by condition, I. 828.
by remainder, I. 828.
contingent or executory interests, I. 828.
lease for life, remainder to executors of lessee, I. 828, 829.
bequests of estate for life in, remainder over, II. 707 n. (*See* II. 696, *et seq.*)
lease of tolls of a light-house, II. 37 n.

CHELSEA WATERWORKS,
shares of personalty, II. 37.

CHILDREN,
who are entitled under the description of children in a will, II. 340, *et seq.*, 433 n., II. 359—369. (*See* LEGATEE.)
includes after-born children, II. 343 n., *et seq.*
of different marriages, II. 361 n.
grandchildren, II. 359 n.
adopted children, II. 362 n., 431 n.
step-children, II. 362 n.
illegitimate children, II. 364 n.
when confined to those existing at the date of the will, II. 340 n.
at death of testator, II. 341, 343 n., 352 n.
born after the period of distribution excluded, II. 347, 348, 349, 350.
when none are born, at death of testator, II. 351.
bequest to "A. and his children," II. 351, 352, 393.
rule in *Wild's Case*, II. 352.
bequest to "A. or his children," II. 393.
"younger children," how construed, II. 355—358.
when they take a legacy as substitutes for their parents, II. 502 n., 504.
bequest to, without words of severance, creates a joint tenancy, II. 810 n.
legacy to, does not lapse by death, if they leave issue, II. 512, 513.
construction of gifts to, with survivorship clause, II. 814—816.
construction of gifts to, after life estate, II. 550, *et seq.*, 812—814.
vesting of gifts to, II. 550—553. (*See* LAPSED LEGACIES, and II. 814—816.)
whether child appointed executor can take portion if he renounces, II. 598 n.
right of, to take administration to their father, I. 500, 501.
preferred to his parents, I. 501.
right of, to distribution under the statute, II. 877, *et seq.*, 886 n. (*See* DISTRIBUTION.)
right of their representatives, II. 877.
when they take *per capita*, and when *per stirpes*, II. 878. (*See* II. 907.)
advancement to, II. 879, *et seq.* (*See* ADVANCEMENT.)
take as a class, II. 507 n.
preference of legacies to, II. 672 n.
omitted from will, I. 243 n.
allowance for maintenance, II. 865 n., *et seq.*
distributive share of adopted child, II. 913 n.
illegitimate child, II. 913 n.

CHIMNEY PIECES. (*See* FIXTURES.)
whether removable by executors, I. 857.

CHOSES IN ACTION,
definition, etc., of, II. 1.
an annuity is not a chose in action, but a chattel interest, in equity, II. 1 n.
to what executor is entitled, II. 2, *et seq.* (*See* ACTIONS, ASSETS, ESTATE.)
vested formerly in executor though assigned by deceased, II. 48
now assignable by Judicature Acts, II. 48.

CHOSES IN ACTION.—*Continued.*
of wife, II. 55, 73 n. (*See* HUSBAND AND WIFE.)
do not pass by a bequest of "goods" in a particular place, II. 460—464.
nor of "all things" in a particular house, II. 460.
inventory must include, II. 182 n.

CHRISTIAN RELIGION,
persons denying, formerly disabled to be executors, I. 275 n.

CHURCH. (*See* DILAPIDATIONS, QUARE IMPEDIT.)
next presentation to,
when it goes to the executor, I. 807, *et seq.* (*See* III. 117.)
options of an archbishop, I. 809.
with relation to husband and wife, when wife is seized of the advowson. I. 827.
when the husband surviving shall have *quare impedit* II. 71.
when executor of husband, tenant by courtesy shall have, I. 807.
when assets, III. 117.
bequests for building or endowing when exempt from Mortmain Acts, II. 308, 305 n.

CITATION,
purpose of, I. 372.
of executor to prove or refuse the will, I. 323, 372. (*See* RENUNCIATION, PROBATE, REVOCATION.)
of person with superior title by person with inferior, I. 372. (*See* I. 686.)
party citing must have possession of will, I. 373.
of parties interested to oppose probate of will in solemn form, I. 391, 392.
of executor to prove will *per testes*, I. 393.
revocation upon, I. 682, 688.
of heir, order for, how obtained, I. 402.
of next of kin, by creditor applying for administration, I. 516, 517.
creditor may cite though his right of action statute barred, I. 373 n., 516 n.
of next of kin, if nobody who has a right appears to oppose the will, I. 394.
by next of kin, contesting a will, of all persons interested "to see proceedings," I. 691.
or consent, if party have a prior right, requisite before administration granted to another, I. 516 n (*n*), 523.
what necessary before grant of administration *cum testamento annexo*, I. 558.
before grant *de bonis non*, I. 572.
before grant of limited administration, I. 609, 610.
of executor, to account in Probate Court, III. 114 n., 662.
attachment of persons disobeying, I. 374 n.
in non-contentious business, I. 374.
service of, must be personally if possible, I. 517.
if not by advertisement, I. 517.

CIVIL DEATH,
administration upon, I. 678 n.

CIVIL SERVANTS,
when representation not necessary to, I. 551.

CLAIM, (*See* ACTION, PARTIES, REMEDIES, PRESENTMENT.)
by or against executor as such, may be joined with claim by or against him personally, III. 542. (*See* COUNTERCLAIM.)
where plaintiff sues or defendant is sued in representative capacity, claim must show, III. 452.
when executor must claim as such, III. 453.

CLASS. (*See* CHILDREN.)
bequest to a, II. 504, 505, 507 n., 508, 509 n., 520 n., 536 n., 814—816. (*See also* II. 340. *et seq.*)
not within s. 33 of Wills Act, II. 512, 513.
with substitutionary gift over, II. 502 n.

CLASS.—*Continued.*
when class to be ascertained, II. 340, *et seq.*
what constitutes a class, II. 507 n.
when number of class wrongly specified II. 342 n., 434, 435.
void for remoteness as to one member, void in tota, II. 552.

CLERICAL ERROR,
can be corrected in probate, I. 423 n.
so by court of construction, II. 337.

CLERK,
when salary of, has preference in payment of debts of deceased, II. 222 n.

CLOCK CASES. (*See* FIXTURES.)
pass to executor, I. 858.

CLOVER. (*See* EMBLEMENTS.)
within the rule of emblements, I. 837.

CO-ADJUTOR,
office of, distinguished from that of executor, I. 283, 301 n.

COAT ARMOR,
set up in a church, property in, I. 846.

CODICIL. (*See* WILL.)
old meaning of the term, a testament without an executor appointed, I. 6.
originally executor could not be primarily appointed by, I. 278 n.
derivation of the word, I. 6.
modern acceptation of the term, I. 7.
is part of a will, making but one testament, I. 7 n., 8 n., 256 n. (*See* I. 256.)
cases where it is otherwise considered, I. 7, 8, and notes.
when a cancellation of the will is so of the codicil, I. 204.
when of an interlineation, is so of a codicil to the same effect, I. 206.
revoking bequests in will, but not revoking appointment of executors does not revoke will, I. 215 n.
intending to revive destroyed will does not necessarily revoke intermediate will, I. 230, 266.
referring to will destroyed does not revoke later will, I. 227.
republication or revival of will by, I. 214 n., 235 n., 250, *et seq.*, II. 283 n. (*See* WILL, *republication.*)
will republished by, to be deemed made at date of republication (1 Vict. c. 36, s. 34), I. 264.
may give effect to unattested alterations or additions to will, I. 142 n., 253 n., 265.
or render valid previous unexecuted will, I. 266.
effect of showing intention to revive a destroyed will, I. 266.
effect of republication of prior will, upon subsequent codicils, I. 256.
gift by, cumulative or substituted, I. 219. (*See* too, I. 257 n.)
effect of probate, as to will and codicil being distinct instruments, I. 656, 657, II. 604.
not probated separately, I. 7 n.
controls will, I. 253 n.
may revoke will, I. 212 n., 214 n.
(But *see*, I. 216 n., 221 n.)
may enlarge devise, I. 258 n., 260 n.
may render it conditional, II. 566 n.
indicated by word "will," I. 253 n.

CO-EXECUTORS. (*See* EXECUTORS.)
appointment of, I. 284.
considered as one person, I. 285, II. 142.
probate by one enures to the benefit of all, I. 462.
the estate of several executors, II. 104—105.
survivorship as to residue, II. 104, 820.
the power of several executors, II. 142, *et seq.*

CO-EXECUTORS.—*Continued.*
all the executors cannot sue on a promise made to one of them, II. 81, 104 n.
several executors cannot sue on a promise made jointly with one of them, II. 105.
when one executor may sue another, I. 336, II. 151, 631, III. 474 n., 560 n
in equity, III. 484, 657 n.
must all join in bringing actions, II. 150, III. 450, 473 n., 485.
unless they have renounced, stat. 20 & 21 Vict. c. 77, s. 79, I. 333, 335, III. 451.
no more need be sued than have administered, III. 512 n.. 520, 559 n., 658 n.
how far one can impose a charge on the rest, II. 142, 144, III. 526—528.
one cannot bind the others by his contract, II. 145.
survivorship amongst, II. 146.
exercise of power given to, II. 146—150.
when liable for the *devastavit* of each other, III. 379, *et seq.*, 393 n., *et seq.*
notice to one is notice to all, III. 379.
should not lend to each other, III. 336, 395 n.
receipt of assets by one does not charge the other, III. 379, 396 n.
nor entry by one into leasehold, II. 144, 145.
diligence required against estate of, III. 360 n.
disagreement as to investments, III. 362 n.
several bonds, III. 394 n., 396 n.
separate accounts, III. 394 n., 396 n.
agreement for sole management, III. 393 n.
knowledge of mismanagement by, III. 394 n.
pleas by, III. 522.
judgment against, III. 545.

COFFIN,
property in, I. 846.

COGNOVIT ACTIONEM,
is revoked by the death of the party giving it, III. 555.

COLLATERAL,
loss through negligence, III. 354 n.

COLLATERAL INHERITANCE TAX. (*See* SUCCESSION TAX.)

COLLECTION OF EFECTS,
duty of executor as to, II. 185.

COLLIGENDUM. (*See* LETTERS *ad colligendum.*)
letters *ad*, I. 324, 520.

COLLUSION,
between executor and alienee will vitiate disposition of assets, II. 122, 123.

COLONIAL BONDS,
will not pass by bequest of foreign bonds, II. 476

COLONIES,
probate of will here will not extend to, I. 438. (*See* III. 106, *et seq.*,
nor a grant of administration, I. 505.
what passes by bequest of "plantation" in, II. 490.
property in, when assets in the hands of the executor, III. 105—114.

COMMISSION. (*See* ALLOWANCE.)
when executor entitled to, III. 429, *et seq.*

COMMISSION OF LUNACY,
presumption arising from verdict on, I. 43.

COMMISSION OF REVIEW,
what it was, I. 684.

COMMUNITY PROPERTY,
half to surviving wife or husband, by statute, I. 794 n.
all to surviving husband, I. 795 n.
neither can dispose of the other's part, I. 795 n.
each half subject to debts, I. 795 n., 796 n.
administration by survivor, I. 795 n.
when gift of property includes community, I. 461 n.
gift of community includes what, II. 461.

COMPANY, JOINT STOCK. (*See* CORPORATION. SHARES.)
shares of, personal estate under Companies Act, II. 37.
when real estate, II. 36.
executor may present petition for winding up before probate, I. 370.
action for misrepresentation in prospectus of, does not survive against executor of director, III. 228 n.
nor for negligence, III. 228 n., (*k*). II. 654.
shareholders in, liability of their executors, III. 249—252, 307 n.
same as that of their testators, III. 250 n., 251 n.
executors may become personally liable, III. 252.
where they have committed a *devastvait*, III. 253.
sale of testator's business to, III. 504.
rule as to joining partner of testator, in action against executor does not apply to, III. 624 n.

COMPOUND,
power of executor to, II. 31 n., 131, 153 n., III. 325, 361 n.

COMPULSORY SALE,
of land, whether proceeds personalty or realty, I. 785 n. (*See* CONVERSION.)

CONCEALMENT OF WILL,
by executor, remedy against him, I. 373, 379 n.

CONCURRENT GIFTS,
whether such or substitutionary, II. 393—394.

CONDITION,
conditional executors, I. 291. (*See* EXECUTOR, *appointment of*.)
conditional will, I. 231, 232 n., 235 n. (*See* CONTINGENT WILL.)
estates by, pass to executor, I. 828, II. 88, *et seq.*
suits accruing by, to executor, II. 84.
when to be regarded as a conditional limitation, II. 580, *et seq.*

CONDITIONAL DEVISES, II. 548 n., 576, 585 n.

CONDITIONAL LEGACIES. (*See* VESTED LEGACIES.)
definition of, II. 558.
how condition created in a will, II. 558.
condition precedent or subsequent, II. 558—567.
condition subsequent may defeat a contingent interest, II. 565 n.
considered as trusts imposed rather than as conditions, II. 567.
legacy to one, and in case of his death to another, II. 567—569
impossible conditions precedent, II. 570.
subsequent, II. 571.
illegal conditions precedent, II. 571.
subsequent, II. 572.
repugnant conditions, II. 573—578.
uncertain conditions, II. 573.
performance of conditions precedent, II. 578—584.
substantially, though the very condition has not happened, II. 578, 580 n.
when construed as conditional limitations, II. 580.
of conditions subsequent, II. 583.
when conditions subsequent *in terrorem*, when good, II. 585 n.
condition subsequent of death of legatee before the legacy becomes "payable," II. 584.
condition not to dispute the will, II. 585—587.

CONDITIONAL LEGACIES.—*Continued.*
conditions in restraint of marriage, II. 587.
when valid, II. 587—589.
in restraint of widow's marriage, II. 590 n.
in restraint of widower's marriage, II. 590 n.
conditions and limitations distinguished, II. 590. (But see *ibid.*)
when rejected as inapplicable, II. 591.
performance of, II. 591—594.
marriage with consent, II. 594. *et seq.*
when consent to be obtained, II. 592.
of whom, II. 592.
may be presumed after lapse of time, II. 592 n.
consequence of death of one of several whose consent is required, II. 592.
what consent sufficient, II. 593.
unreasonable refusal to consent by executors, controlled in equity, II. 594.
legacies to executors, II. 595—600.
given in that character, are on condition of accepting office, II. 595.
makes no difference that the executor is unable from infirmity to prove the will, II. 595 n.
when a legacy is considered as given to an executor in that character, II. 595—598.
presumption as to this, II. 596.
what is sufficient assumption of the office to satisfy the condition, II. 598.
by way of annuity for his trouble, II. 600.
liability of executor legatee accepting office, II. 600.
of a handsome gratuity void for uncertainty, II. 600.
conditional on paying testator's debts, II. 600.
legacies directed to be enjoyed in a particular mode, or applied in a particular way, II. 601.
rule as to absolute gifts with a revocation, or qualification of them, for purposes which fail, II. 601.

CONFEDERATE CURRENCY AND BONDS,
liability of executor receiving, II. 135 n., 153 n.
paying, II. 226 n.
evidence that will contemplated, II. 491 n.
investments in, III. 368.

CONFIDENTIAL POSITION,
person in obtaining will in his favor, I. 162, *et seq.*, 412 n., 657 n., 662 n. (*See* FRAUD, INFLUENCE, PROBATE, *Manner of Obtaining.*)

CONFIRMATION. (*See* SCOTLAND.)

CONFLICT OF LAWS. (*See* DOMICILE, FOREIGNER.)
distribution according to law of domicil, I. 268 n.
payment of creditor at his domicil, I. 268 n.
foreign letters not recognized at domicil, I. 354 n.

CONIES,
in a warren, when they pass to executor, I. 831.

CONSANGUINITY,
how calculated, I. 497, *et seq.*, II. 901, *et seq.*

CONSERVATORY,
whether a fixture, I. 864.

CONSIDERATION,
what is sufficient to make an executor personally liable, III. 293—297.
for promise to answer for debt, etc., of another person need not appear in writing, stat. 19 & 20 Vict. c. 97, s. 3, III. 298.

CONSTRUCTION. (*See* LAPSED LEGACIES, MISTAKE, WORDS.)
of will of personalty, II. 327, *et seq.* (*See* LEGACY, LEGATEE.)
when original instead of probate may be examined, I. 668—671.
must be according to the law of that country where testator domiciled, II. 339. (*See* also I. 439. 445, II. 329 n. (*e*).)
jurisdiction of courts of equity as to, I. 355, *et seq.*, 662, *et seq.*, III. 506 n.
decision of court may be obtained as to on originating summons, III. 490.
general rules of,
technical words not necessary, II. 329.
technical words to be taken in their legal sense, II. 329, 379 n.
technical words in holograph will, II. 329 n.
technical words of foreign law, II. 329 n.
particular intent to be sacrificed to general, II. 330, 379 n.
must be on the whole will, and not of disjointed parts, II. 331.
clear gift not cut down without equally clear intention, I. 229.
when the same words occur more than once, II. 331, 378 n., 380 n.
when one bequest construed with reference to another, II. 332. (*See* II. 484 n.)
effect must be given to every word, II. 333.
if two parts irreconcilable the latter will prevail, I. 219, II. 333.
when words may be transposed, supplied or rejected, II. 333—335
"or" construed "and," and *vice versâ*, II. 334, 335, 499 n.
"if" construed "when," II. 336.
terms which, applied to realty give an estate tail, give the absolute interest if applied to personalty, II. 377.
mistakes and omissions, how to be corrected, II. 337, 423, *et seq.*
not by reference to instructions for the will, II. 338.
erroneous recitals, how far binding, I. 155 n., II. 337, 493, 494, 619.
bequest not to be controlled by reason assigned, II. 337.
by inference from context, II. 338.
by its unmeritorious nature, II. 338.
where words are capable of twofold construction, II. 338.
where intention cannot take effect in part, II. 338.
general words, whether cut down by defective enumeration of particulars, II. 465—467.
of words of time, II. 514 n., 516 n., 520 n., 533 n.
vested or contingent, II. 514 n., 520 n., 544 n.
particular words construed. (*See* WORDS.)
rules of Mr. Jarman, II. 327 n., *et seq.*
of words in primary meaning, I. 155 n.
to pass the inheritance, I. 155 n.
to pass all the real estate, I. 264 n.
to raise a power of sale, I. 797 n.
to raise a trust, I. 155 n.
to work a conversion, I. 800 n.
to support a gift, II. 575 n.
to prefer a legacy, II. 674 n.
to cumulate legacies, II. 603 n., 606 n.
to create a condition, II. 558 n., 578 n.
of punctuation, I. 155 n.
of repugnant words, I. 211 n.
of same words in different parts of will, I. 155 n.
of codicils, I. 212 n., 220 n., 253 n., 256 n., 258 n., 260 n., 263 n.
of holographic wills, I. 148 n.
by Probate Court, III. 666 n.
in administration, I. 352 n., 674 n.
in proceedings for removal, I. 710 n.
in distribution, I. 352 n., 674 n.
not established by probate, I. 674 n.
by court of Chancery, I. 356 n., III. 666 n.
parol evidence, when admissible, II. 426—431, 490—495, 606, 608.
the will shall take effect, as if executed immediately before the death (1 Vict. c. 26), I. 4, 5, 260, *et seq.*, II. 338, 641.
of wills made by testators domiciled in foreign countries, II. 339.
trust arising by, I. 657—662.
of administrator's bond, strict, I. 635 n.

CONSUMABLE GOODS,
gift of, for life, II. 707.

CONTINGENCY,
death coupled with, II. 569 n.

CONTINGENT DEBTS,
what are, II. 238 n.
funds retained to meet, II. 225 n.
presentment of, II. 237 n.
statutes, II. 238 n.
limitation on rejection of, II. 248 n.
not proved against insolvent estate, II. 253 n.
their rank in payment by executor, II. 218—221.
how to be regarded with respect to legacies, etc., II. 654, *et seq.*, 654, 655.
liability of executor as to, II. 654, 655. (*See* II. 796, *et seq.*)
liability on shares not a debt till call is made, II. 796 n.

CONTINGENT ESTATES,
in chattels real, pass to executor, I. 828.
lease for life, remainder to executors of lessee, I. 828, *et seq.*, II. 84.
contingent interests,
pass to executors, II. 88, *et seq.*
contingent legacies, II. 89, 90, 495, *et seq.* (*See* LAPSED LEGACIES.)

CONTINGENT LEGACIES, II. 495, *et seq.* (*See* LAPSED LEGACIES.)

CONTINGENT OR VESTED DEVISES, II. 548 n.

CONTINGENT WILL, I. 231—235.
definition of, I. 231.
cases where wills construed as contingent, I. 233 n.
court cautious in so construing a will, I. 232.
evidence of adherence cannot establish will in terms conditional, I. 234.
where contingency uncertain at testator's death probate granted immediately, I. 234.
conditional codicil when admitted to probate, I. 235.
condition must be part of duly executed will since Wills Act, I. 235.

CONTINUANCE OF SUITS. (*See* REVIVOR.)
by executor or administrator, where cause of action survives. II. 91, *et seq.*
now regulated by Order XVII. R. S. C. 1883, II. 91, *et seq.*, III. 242.

CONTRACT. (*See* ACTION, COVENANT, EXECUTOR, LIABILITIES, REMEDIES.)
for sale of land, conversion affected by, I. 784, 785. (*See* CONVERSION, ESTATE, *quantity in possession.*)
sale of land superseded by devise, II. 25 n.
specific performance of contract, II. 25 n.
interim rents in such case, I. 784 n.
rights of executor on testator's, II. 2, *et seq.*, 20 n., 25 n.
founded on personal considerations not go to executor, II. 3 n., 39.
action for breach of promise of marriage does not survive, II. 13, 14.
executor may sue on his own contracts, II. 79, *et seq.*
either in his own name or in representative capacity, II. 79.
or in both, II. 82.
executor may sue on contracts of testator when right of action accrues in his own time, II. 82, *et seq.*
where contract with testator and *his assigns*, II. 83.
property contracted for by testator will pass if described in will as his actually, II. 495.
executor liable on testator's contracts generally, II. 22 n., III. 222, *et seq.*, 279 n., 311. (*See* CONVERSION.)
even though not named, III. 224.
not liable on contracts for personal service, III. 224. 225.
not liable for breach of promise of marriage, III. 225 n.
executor's liability where testator a joint contractor, III. 240—249, 290 n.

CONTRACT.—*Continued.*
executor's liability on his own contracts as executor, III. 288, *et seq.*
personally, III. 292, *et seq.*, 312 n.
agreement for testamentary provision, I. 386 n.
against contest of will, I. 397 n., 398 n.
by predecessor in office, II. 113 n.

CONTRIBUTION,
to share of after-born child, I. 241 n.
among executor's sureties, I. 642 n.
preference of liability for, II. 211 n.
presentment of claim for, II. 238 n.
among co-executors, III. 397 n.
among legatees, for debts, II. 800 n.
among co-contractors or partners, III. 248, 290 n.

CONTRIBUTORIES,
under Companies Act, III. 250. (*See* SHARES.)

CONVERSION. (*See* RESIDUE, TENANT FOR LIFE.)
of property in equity, I. 783, *et seq.*, 800 n., *et seq.*
land considered as money, and money as land, I. 783, 800 n., 818 n.
what amounts to a direction for, I. 783 n.
will of land converted into personalty entitled to probate, I. 387 n., 468 n., 472, 783 n.
will of personalty converted into land not entitled to probate, I. 472.
proceeds of sale of land liable to be laid out in land not personalty or subject to probate, I. 785 n.
land contracted to be sold, I. 785, III. 265—267.
the law is the same where the sale is compulsory, I. 785 n., 792.
money covenanted to be laid out in land, I. 785.
"out and out," by will, I. 786.
for particular purposes which fail, I. 787, *et seq.*
capacity to take after failure, I. 802 n., II. 270 n.
surplus after satisfying purposes of sale, I. 806 n.
when conversion takes effect, I. 802 n., 803 n.
what law governs, I. 800 n.
when property once vested no equity to have reconversion, I. 787 n., 789 n.
mixed fund from produce of sale of real and personal estate, I. 787—790.
by trustees of an infant, I. 790.
real property purchased with partnership capital, I. 790.
by committees of a lunatic, I. 791.
of property of a lunatic under 53 Vict. c. 5, and 7 & 8 Vict. c. 18, I. 792.
election to take it in actual state, I. 783 n., 801 n.
the Crown has no equity to call for, I. 783 n.
order for sale in administration action effects conversion from its date, I. 783 n., 800 n.
of assets into authorized investments,
duty of executor to make, II. 699—704. (*See* II. 455—458.)
where there is a trust for, II. 695—698, 698 n.
where executor has discretion to postpone, II. 457, 698 n., 701, 703 n.
where postponement is for benefit of estate, II. 698 n., 702.
where postponed, how capital and income distinguished, II. 698 n., 701 n., 702, 703 n.
where the will contains no direction, II. 702, 703 n.
where there is a prohibition or presumption against, II. 458, 698 n., 701 n., 704.
of realty and personalty into a mixed fund, II. 544 n., 556, III. 165.
consequences of neglecting to do so, III. 342.
what are authorized investments, III. 338—341.
of property by *devastavit*, III. 607.

CONVICT FELON. (*See* FELON.)
administration to, no longer granted to crown, I. 512.
legacy to, who is entitled to receive, II. 740.
legacy to wife of, II. 731.
wife of, may make a will apart from Married Woman's Property Act, I. 90.

CO-PARCENERS,
whether bound to bring land into hotchpot, II. 881 n.

COPYHOLD,
assets marshalled against, III. 210.
whether executors can distrain for rent out of, II. 118.
fines,
action for, passes to executor of lord, II. 46.
executor must be admitted and pay his fine, III. 276.
what words will pass, II. 328 n., 468 n.
trust or mortgage estates in do not pass to executor under Conveyancing Act, 1881 . . . III. 122 n.

COPYRIGHT,
executor's interest in, II. 40 n.

CORN,
action for cutting growing corn,
does not survive to executor, II. 6. (*See* II. 7, 8.)
secus, if cut and carried away, II. 7, 8.
when growing corn passes to executor, I. 835. (*See* EMBLEMENTS.)

CORONER'S INQUEST,
when removable by *certiorari* and traversable by executors, II. 96 n.

CORPORATION,
aggregate,
whether it can be executor, I. 270.
appointment of *syndics* to receive administration, I. 270.
accepted as surety to administration bond, I. 623 n.
legacies of books, etc., to certain, free from duty, III. 82.
succession duty payable by, III. 54.
presentment of claim by, II. 240 n., 242 n.
when may take under will, II. 270 n.
foreign when may take gift, II. 270 n., 271 n.
when may take land, II. 271 n., 285 n.
municipal, when may take, II. 274 n.
devise to charitable or religious, II. 285 n., 286 n.
for charitable use, II. 320 n.
misnomer as legatee, II. 427 n., 431 n.
sole,
may be executor, I. 270.
lease to, and his successors, goes to his executors, I. 811.
chattels which go to his successors like heir-looms, I. 849.
chosen in action go to his executors and not his successors, II. 47.
except by custom, II. 47.
misdescription of in a will, II. 425 n.

CORPSE. (*See* DEAD BODY.)

CORRECTION. (*See* RECTIFICATION, CONSTRUCTION.)
of error in will in probate, I. 423 n.
by Court of Construction, II. 337.

COSTS. (*See* ATTORNEY, SOLICITOR.)
in Probate Division,
in discretion of court, I. 448, 449 n.
but generally follow event where action tried by jury, I. 401, 449.
party citing executor to prove in solemn form, when liable to, I. 399, 400.
distinction between next of kin and legatee, I. 400. (*See* also I. 452.)
liability of heir at law to, I. 402.
in what cases decreed out of the estate of deceased, I. 450—453.
when executor will be condemned in, I. 451.
costs of interveners depend on circumstances, I. 299 n., 453.
security for, when executor will be ordered to give, I. 452, 453.
what costs are included, I. 454.

COSTS.—*Continued.*
on contest of will, I. 450 n., II. 194 n.
on withdrawal of caveat, I. 455 n.
on removal of administrator, I. 722.
expenses of administration include probate costs, II. 193 n.
and foreign probate, II. 193 n.
in actions at law *by* executors and administrators,
in what cases they are liable to, upon a nonsuit or verdict against them, II. 85 n., 94, III. 468.
when entitled to costs out of the fund, III. 468.
the executor may be compelled to give security for, III. 468.
in actions of law *against* executors and administrators,
for the defendant, III. 468, 545.
executor's liability to costs, III. 545.
where he is made a party under Ord. XVII., III. 461 n.
on judgment of assets *in futuro*, III. 546.
in action for death, II. 32 n.
on administration bond, II. 211 n.
on preferred claim, II. 213 n.
for construction of will, I. 449 n.
affected by failure to give notice of appointment, II. 232 n.
to make presentment of claim, II. 234 n.
and affidavit, II. 241 n.
by condition in will requiring additional costs as penalty, II. 586 n.
security for, on revival of action, II. 101 n.
on contest of will, I. 385 n.
in suits in equity by and against executors, etc., III. 639.
of suit to secure legacy to an infant, II. 719.
in administration action, III. 493, 639.
of the executor out of the fund, III. 639.
cases in which executor personally liable for, III. 640.
executor entitled to except, for special reasons, III. 640, 641.
misconduct, III. 640.
bringing useless action, III. 641.
costs except for misconduct as between solicitor and client, III. 641.
if condemned in costs appeal will lie for executor, III. 641.
where executor debtor to estate, III. 641.
where one of two a debtor, III. 641.
principle of costs being disallowed in such case, III. 642.
costs of defaulting executor becoming bankrupt, III. 642.
cases where defaulting executor allowed costs, III. 643.
priority of executor's costs, III. 643.
of executor of defaulting trustee, III. 643, 644.
what allowed under "costs, charges, and expenses," III. 644.
order giving may be appealed from, III. 644.
"costs" will not include "charges and expenses," III. 494.
"moderation" of costs, III. 644. (*See* III. 433.)
of solicitor trustee, III. 425—429, 645.
in an action, III. 427 n., 645, 646.
of plaintiff in action out of fund, III. 646.
of legatee plaintiff, III. 646, 647.
right of creditor to solicitor and client costs, III. 615, 647.
of creditors coming in under the decree, III. 648.
whether costs payable out of particular fund or general estate, III. 648, 649.
of administration of real estate, III. 649.
when plaintiff shall pay executor's costs, III. 650.
of useless proceedings brought by legatee, III. 650, 651.
executor cannot sue *in formâ pauperis*, III. 486.
of production of original will, I. 668.

COUNSEL FEES. (*See* SOLICITOR.)

COUNTERCLAIM. (*See* SET-OFF.)
cannot be made against executor as such in same action as against him personally, II. 82 n., III. 456, 521 n.
when defendant cannot rely on as defence to action, III. 455 n

COUNTS,
joinder of,
in actions by executors, III. 452, 521.
in actions against executors, III. 521, 522.

COUNTY COURT,
where personalty is under 200*l.* and real estate under 300*l.* has jurisdiction of the Court of Probate in contentious business, stat. 21 & 22 Vict. c. 95, s. 10 . . . I. 359, 360.
Probate Division has power to remit proper cases to, I. 360.
rules of practice as to proceeding in, I. 360.
appeal from County Court to Divisional Court of Probate Division, I. 361.
where personalty of intestate under 100*l.*, widow and children may in certain cases invoke jurisdiction of County Court in non-contentious business, I. 361, 542.
children of poor widows dying intestate may do the like, I., 362, 543.
any executor may sue and be sued in County Court as if he were a party in his own right, III. 469, 554.
legacy, etc., not exceeding 50*l.* recoverable in, III. 519.
a question of *devastavit* may be tried in such a suit, III. 519 n.
jurisdiction in equity to be exercised by, in suits by creditors, etc., where estate does not exceed 500*l.*, III. 519, 614, 668.
judge, etc., of County Courts to have power of judge, etc., of Chancery Division, III. 668.
where amount of subject matter of suit exceeds limit, suit may be remitted to Chancery Division, III. 668.
in which of the County Courts proceedings shall be taken, III. 614 n., 669, 670.
transfer of suit from one County Court to another, III. 670.
rules and orders, III. 671.
when administration action may be brought in, III. 614.
transfer of administration action to, III. 614.
decision of question without administration, III. 615.
partial administration, III. 671.
injunction, III. 671.
parties aggrieved may appeal, III. 672.
how money may be paid into County Court, III. 669.

COURT OF ARCHES,
what it is, I. 683 n.

COURT OF PROBATE. (*See* PROBATE—ADMINISTRATION—COUNTY COURT.)
substituted for the Ecclesiastical Courts universally by 20 & 21 Vict. c. 77, I. 337—339.
now by the Judicature Acts, consolidated into, and forms a Division of the Supreme Court of Judicature, I. 340.
testamentary jurisdiction to be exercised in the Queen's name by this court, I. 339.
to have throughout all England the same powers as the Prerogative Court of Canterbury, I. 340.
to have the power of citation, I. 323.
practice of the court to be according to that of the Prerogative Court, I. 384 ibid. n.
rules and orders to be made for regulating procedure of, I. 384.
rules of evidence in common law courts to be observed, I. 403.
establishment in the United States, I. 341 n.
jurisdiction in the United States, I. 481 n., II. 665 n.
exclusive of chancery, I. 344 n., 483 n.
jurisdictional facts, I. 482 n.
residence of decedent, I. 352 n.
presumption as to, I. 677 n., 678 n.
to grant probate and letters, I. 483 n, 611 n.
to revoke letters, I. 708 n.
probate, I. 692 n., 708 n.
to construe will, I. 710 n., III. 666 n.
to determine liabilities, I. 710 n., II. 51 n., 53 n.

COURT OF PROBATE.—*Continued.*
to establish debts, II. 247 n., 251 n., III. 666 n.
to relieve for non-presentment, II. 245 n.
to settle accounts, II. 111 n., III. 665 n., 667 n.
to sell real estate, II. 132 n.
to decree distribution and payment of legacies, III. 665 n.
to order transfer of trust funds, III. 138 n.
to determine *devastavit*, III. 353 n.
procedure, on equitable principles, I. 543 n.
the executor cannot rely on his right in any other court without the production of the copy of the will certified under the seal of the court, I. 346—348.
but he derives his title from the will and not from the probate, I. 354.
courts of equity are courts of construction of wills, I. 355.
and so were the ecclesiastical courts, I. 356.
but the Court of Probate is not, I. 356.
Court of Probate has power to require attendance and examine witnesses, etc., I. 357, ibid. n.
and to order production of deeds, etc., I. 357.
and of testamentary papers, I. 373.
and to enforce orders, I. 357.
judge of the court may amend grants of probate made before Jan. 11, 1858... I. 358.
grants made before the Probate Act which were void or voidable by reason of there not being, or being *bona notabilia*, valid, if not already revoked, I. 359.
second and subsequent grants to be made where the original will or letters of administration are deposited, I. 359.
disputed will to be lodged in registry, I. 375.
place of deposit of will under control of, I. 375, 466.
of living persons, I. 378.
calendars of grants of probate, etc., to be made in principal registry of, I. 376 n.
copies of calendars to be transmitted to district registries, etc., I. 376 n.
official copies of wills to be obtained on payment of fees, I. 376 n.
original will, production of, how obtained, I. 377.
district registries to be established under control of, I. 381.
probates, etc., may be granted in common form by district registrars upon affidavit that testator had a fixed place of abode, I. 382.
affidavit to be conclusive for authorizing grant of probate, 1. 382.
district registrar not to make grants when there is a contention, I. 382.
proof of wills in solemn form is contentious business, I. 391.
practice respecting, I. 392, *et seq.* (*See* PROBATE.)
must transmit to principal registry notices of applications for probate and receive certificate, I. 383.
also lists of grants of probate, I. 383.
to preserve original wills, I. 384.
appeal from, to Court of Appeal, I. 684.
rules respecting appeals, I. 684.
no suit for legacies to be entertained by, III. 663.
nor for distribution of residues, III. 664.

COURTS. (*See* UNITED STATES COURTS.)

COURTS BARON,
certain under the old law had probate of wills, I. 337.

COUSINS,
who can take under description of, I. 375—377.
"first and second cousins," II. 376.
degree of kindred of, I. 498, *et seq.*, II. 912 n.
a first cousin, twice removed, is in the same degree as a second cousin. I. 499. (*See* II. 376.)

COVENANT,
not to revoke a will, I. 174, *et seq.*
actions of, survive for executor, II. 2, 3.
not where the covenant is joint. III. 448. 449.
unless the interest is several, III. 449, 450.

COVENANT.—*Continued.*
where actions on covenants real descend to the heir, II. 15, *et seq.*
immaterial that a breach was incurred in ancestor's life, II. 15.
unless the personal estate was prejudiced, II. 18.
to pay rent, when the executor cannot sue on, II. 40 n. (*t*).
where actions on covenants real pass to executors, II. 14—18, 19, 20, 24 n.
actions on covenants real by executor of reversioner for years, II. 20.
on covenant with testator to perform something on a day which happens after his death, II. 83.
actions of, survive against executor, III. 222, 284 n.
though not named, III. 224.
though testator himself not bound, III. 227.
unless personal, as a covenant to instruct an apprentice, III. 224, 225.
joint covenants, III. 240, *et seq.*
covenant to repair, III. 226.
covenant to discharge a lessee of quit-rents, III. 226. (*See* II. 655 n.)
covenant concerning the realty, III. 253, 254.
as between landlord and tenant, III. 254. (*See* EXECUTOR, LIABILITY, RENT.)
after assignment, III. 255—262. (*See* II. 655 n.)
for non-payment of rent, III. 261, *et seq.*
on covenant to repair, III. 262.
debts due by,
their former priority of payment by executor, II. 257.
abolished by Hinde Palmer's Act, II. 257.
implied,
no action lies against executor upon, unless broken in lifetime of testator, III. 255.
what shall constitute, III. 255 n.
executor selling lease entitled to require from purchaser a covenant for indemnity, III. 255.
not bound to enter into covenants for title, III. 255, 320 n.
by Lord St. Leonard's Act executor selling lease or property held on chief rent not liable for covenants, II. 655 n.

CREDITOR. (*See* DEBTS.)
citation of executor by, to prove the will, I. 373.
citation of next of kin by, I. 373, 516.
cannot dispute the validity of a will unless he has had a grant of administration, I. 339, 519.
nor deny an interest, I. 516 n., 519.
secus where he has a grant of administration, I. 519.
when he is bound to bring in the administration, I. 519 n.
grant of administration to, I. 516, *et seq.*, 533 n., 708 n. (*See* ADMINISTRATION.)
who is for purpose of grant, I. 518.
effect of, as to the debt, II. 629.
not to be revoked for a creditor of a larger amount, I. 690.
nor on application of creditor, I. 690.
grant of administration *de bonis non*, I. 574 n.
grant of ancillary administration, II. 926 n.
grant of administration to *cum testamento annexo*, I. 556.
grant of administration to *durante minoritate*, I. 578 n.
grant of administration to *durante absentiâ*, I. 596.
appointed executor,
effect of appointment, II. 628—631.
by one of several debtors, II. 630.
creditor sole executor, II. 629.
one of several executors, II. 630.
action by creditor administrator, for his own debt, against executor *de son tort*, II. 630.
if he renounce he may sue his co-executor, I. 336, II. 151, 630.
legacies to creditors who have compounded with testator have no preference in abatement to other legacies, II. 671.
bequest to, duty on, III. 78—85.
whether it abates by death of creditor, II. 498.
power of executor to prefer, II. 136 n., 231, III. 492 n., 536 n.

CREDITOR.—*Continued.*
how controlled, II. 256, 257.
his right to make a legatee refund, II. 797. (*See* also II. 656.)
right of, against administrator *durante minoritate*, I. 584.
priority of creditor to all legatees, II. 653, *et seq.*
as to voluntary debts, II. 217—654.
as to contingent debts, II. 654, *et seq.*
when a legatee must give security against, II. 656.
effect of stat. 22 & 23 Vict. c. 35, s. 27, as to contingent liabilities, II. 655 n.
as to debts of which the executor has no notice, II. 656, *et seq.*
after notice to send in claims, executor not to be liable for debts after distribution of the assets of which he had not then notice, stat. 22 & 23 Vict. c. 35, s. 29, II. 657.
how far it may be barred in a suit for administration of assets, II. 658—660. (*See* III. 589.)
he may prove his debt as long as there is a fund in court, etc., II. 658.
case where some legatees have received their legacies, and some not, II. 659.
priorities of, settled by *lex fori*, III. 112.
who misleads an executor cannot complain of a deficiency in the assets, II. 656 n., III. 542, 543.
property assigned in fraud of, III. 124.
bequest in satisfaction of debt, II. 609 n.
may require inventory, II. 181 n.
may require security, I. 634 n.
may apply for revocation of administration, I. 708 n.
may question release by executor, II. 134 n.
may apply for sale of land, III. 171 n., 178 n.
may enforce testamentary charge on land, III. 198 n.
may enforce collateral, III. 221 n.
right to bring action, III. 471 n.
may sue on administration bond, I. 648 n.
may sue heirs and devisees, III. 205 n.
may sue legatees, for refunding, III. 800 n.
may marshal assets, III. 219 n.
remedies in equity for, III. 589, *et seq.* (*See* ADMINISTRATION, REMEDIES.)
of deceased partner, rights of, III. 243, *et seq.*
of executor carrying on testator's trade, and of testator, their rights respectively, III. 304—312.
for his own demand, III. 589.
suing on behalf of himself and the other creditors, III. 589, 614, 615.
entitled to costs, III. 615.
payment by executor after decree, II. 256.
creditors paid in part before, shall receive no more until the others are paid proportionably, II. 257.
but in taking account executor may stand in place of creditor so paid, II. 25 n.
may obtain an order for the administration of the estate, III. 612, 614, 615.
procedure as to, III. 612, 613.
only bound by order for general administration, III. 491.
may proceed by originating summons, III. 487, 612.
uncorroborated claim by, III. 277, 278, 611.
suit in County Court by, where estate to be administered shall not exceed 500*l.*, III. 668.

CREMATION,
legal method of disposing of corpse, II. 165 n., III. 302 n.
semble, executor entitled to expenses of thus disposing, II. 165 n., III. 302 n.

CRIMINAL. (*See* FELON, TRAITOR.)

CRIMINAL CONVERSATION,
when action survives, II. 20 n., 26 n.

CROPS, GROWING. (*See* EMBLEMENTS, and II. 471.)
when within Bills of Sale Acts, I. 835 n.

CROWN,
debts due to,
their precedence, II. 190.
what sort of debts, II. 191.
by simple contract, II. 190, 221.
whether debts having precedence by statute are to be preferred to Crown debts, II. 192.
executor, surety for testator to, paying debt has Crown's priority, II. 265 n.
ancient jewels of, heirlooms, I. 845.
ancient right of, to administration to intestates, I. 479.
right of, to personalty of person dying intestate without next of kin, I. 509—511.
right of, to moiety where such person dies leaving a widow only, I. 509, 510.
except where affected by Intestates Estates Act, 1890. . . I. 510 n.
how administration granted to, I. 510, 511.
presents to benefices vacant at death of bishop where advowson part of temporalities, I. 808, 809.

CUMULATIVE LEGACIES,
doctrine of, II. 602, *et seq.* (*See* also, as to legacies in codicils, I. 219, II. 604 n., 609 n.)
where there is no internal evidence of intention, II. 602.
where there is internal evidence of intention, II. 604.
parol evidence of testator's intention, II. 606—609.
when a codicil giving a substituted legacy shall be considered as revoking a former codicil, I. 219.

CURRENCY,
in what legacies to be paid, II. 758, *et seq.*
payment of debts in depreciated, III. 358 n.

CUSTOMS,
of London and York, distribution under, II. 841, 929.

"*CY-PRES*,"
performance of condition, II. 578 n., 579 n.
cases where charitable intent executed, II. 284, 312, 313 n.
discretion in trustee, II. 314 n.

DAMAGES (*See* EXECUTOR, *Liability.*)
recovered against executors for injuries by deceased to the property of another, in what order payable, II. 222.
for dilapidations against the executors of a late incumbent of a benefice, II. 222, 223.
against surety on executor's bond, I. 637 n.
in common law action on bond, I. 651 n.
measure of in action for death, II, 33 n.
punitive, in action for death, II. 33 n.
go to whom, in action for death, II. 34 n.

DATE,
of will, proof of, I. 4 n.
not conclusive, I. 102 n.
holographic must have, I. 147 n.

DE BONIS NON. (*See* ADMINISTRATION.)

DE RATIONABILI PARTE BONORUM,
writ of,
lay at common law for a wife and children to recover their thirds of the personalty against the executors of the husband, I. 2.
form of writ, *ibid*,
sons and daughters might join in the writ as "*pueri*," I. 2 n.
controversy whether this was the general law, or only prevailing by custom in particular places, I. 3.

DEAD BODY,
no property in, II. 28 n., 165 n.
executors have right to possession of, II. 165 n.
are responsible for burial of, II. 165 n.
direction by will as to disposal of, not enforceable, II. 165 n.
cremation of, legal, II. 165 n.
executors have property in coffin and shroud, I. 846.
action for mutilation of, II. 28 n.

DEAF,
capacity of, to make a will, I. 18, 19.

DEAF AND DUMB,
capacity of to make a will, I. 18, 19.

DEATH,
action by executor against person who caused the death of the testator, II. 8, *et seq.*, 32 n.
of plaintiff, consequences of, II. 91, *et seq.*, 100 n. (*See* ABATEMENT, EXECUTION, REVIVOR.)
between verdict and judgment, II. 91, 94, 95.
entry of judgment, *nunc pro tunc*, II. 95.
after final judgment, II. 96, III. 468.
after judgment and before execution, II. 95.
of defendant. (*See* ABATEMENT, EXECUTION, REVIVOR.)
between verdict and judgment, II. 91.
after final judgment, II. 96, III. 550.
in execution, III. 551, 552. (*See* II. 95.)
of two persons by shipwreck or other common cause; which is to be taken to survive, I. 494, 555, II. 59. (*See* also II. 497, 498 n., II. 583.)
of testator, when presumed, I. 345 n., 359 n., 378 n., 678 n.
evidence of, III. 485.
administration not granted on civil death, I. 92 n.
presumption of, from long absence, I. 546 n., 573 n.
revocation of letters on disproof of, I. 699 n.
of legatee, I. 378 n., II. 738.
when it operates as revocation of continuing guarantee, III. 279.
authority of attorney determined by death of client, II. 98.
"In case of the death" of a legatee, meaning of this expression, II. 567.
death coupled with a contingency, II. 569 n.
of testator will speaks from, as to property comprised in, I. 4, 5, 260, *et seq.*, II. 339, 641.

DEBENTURE STOCK. (*See* RAILWAY DEBENTURES, SHARES.)
not within Mortmain Acts, II. 294.
what words in Will will pass, II. 476, 636 n. (*See* ADEMPTION.)

DEBT,
charge of on realty, I. 780, *et seq.*, III. 190 n., *et seq.* (*See* ESTATE, *Quantity in Possession.*)
may be deducted from the affidavit of account for probate duty where deceased domiciled in United Kingdom, I. 727, II. 165 n.
for presentment, proof and allowance of debts. (*See* PRESENTMENT.)
payment of debts by executor or administrator, II. 186, *et seq.*
when he becomes liable for them, III. 589.
all debts must be paid before any legacies, II. 653, *et seq.* (*See* CREDITOR.)
contingent debts, II. 218—222, 225 n., 654, *et seq.*
legatee must give security against, II 654.
executor may receive payment in another state, I. 363 n.
probate validates prior payment, I. 364 n.
payment by residuary legatee giving bond, I. 626 n.
in wrong order, breach of bond, I. 641 n.
executor liable, II. 216 n.
by turning over property of insolvent, II. 134 n.
executor's power to pledge or mortgage for, II. 138 n.
before distribution, II. 225 n.

DEBT.—*Continued.*
by order of court, II. 225 n.
jurisdiction as to debts, II. 249 n., 250 n., III. 666 n.
equitable jurisdiction, II. 251 n.
of debts barred by statute of limitations, II. 225 n.
of gaming debts, II. 225 n.
of doubtful debts, II. 225 n.
without formal allowance, II. 249 n.
by executor's note, II. 226 n.
in depreciated currency, II. 226 n., III. 358 n.
payment of, as between capital and income, II. 698 n.
debts of which executor has no notice, II. 229, *et seq.*, 656, III. 324.
executor not liable for debts after distribution of assets of which he had not then notice. Stat. 22 & 23 Vict. c. 35, s. 29, II. 657.
voluntary debts, II. 217, 653.
priority of debts among themselves, II. 187, *et seq.*, 214 n., *et seq.*
with respect to foreign assets, I. 261 n., II. 187—190, III. 136 n.
funeral expenses, II. 186.
expenses of probate, etc., II. 186, 193 n.
costs of administration suit, II. 186, 187.
debts due to the crown, II. 189, 190, 191, 265 n.
preferred taxes, II. 198 n.
debts to the state, II. 199 n.
U. S. government II. 213 n., 214 n.
state institutions, II. 199 n.
solicitor's lien, II. 189.
debts to which priority is given by statutes, II. 191—193, 208 n., 214 n., 225 n.
to commissioners of stamps where credit has been given for the duty on probate or letters of administration, II. 190, 191.
to the parish by overseer, II. 191.
to a friendly society from its officers, II. 191, 192.
to paving commissioners, II. 192.
regimental debts, II. 192.
whether these debts have precedence of the crown, II. 192.
priority determined by what law, II. 210 n.
by directions of will, II. 211 n.
certain bankruptcy rules as to payment of, to prevail in the administration by the court of an insufficient estate, II. 192, 264 n.
all bankruptcy rules as to not imported, II. 193 n.
insolvent estate of deceased debtor may be administered in Bankruptcy on petition of creditor, II. 193 n., 252 n.
debts of record, II. 200—208, III. 240.
judgments, II. 200, 212 n.
what sort of judgment, II. 200, 201, 212 n.
registration of judgments, II. 203.
judgments not registered to have no priority, II. 203.
when judgments as against heirs and executors must be re-registered, II. 203.
effect of not registering, II. 203.
they have no precedence among themselves, II. 204.
decrees in equity, II. 204, 212 n. (*See* DECREES.)
what sort of decrees, II. 204.
recognizances, II. 205.
securities by statute, II. 205.
now obsolete, II. 205.
statute merchant, II. 205.
statute staple, II. 206.
recognizance in nature of statute staple, II. 206.
statute void for want of formalities, II. 207.
joint and several statute, II. 207.
statute for money at a future day, II. 208, 218.
debts secured by lien, II. 212 n.
by execution, II. 211 n.
by testamentary charge, II. 558 n., 560 n.
debts by specialty, II. 211 n. 217.

DEBT.—*Continued.*
rent, II. 217. (*See* RENT.)
what is a specialty debt, II. 217.
priority over simple contract debts abolished in case of persons dying after December 31st, 1869 . . . II. 217.
voluntary bond or covenant, II. 217.
bond usurious, or *ex turpi causâ*, II. 218.
future and contingent debts, II. 219—221.
cannot generally be paid till contingency arise, II. 219.
in case of insolvent estates *semble* creditors may now value their debts and prove at once, II. 219.
as to payment of legacies notwithstanding, II. 653, *et seq.*
quære whether an annuity a contingent debt since Apportionment Act, II. 220 n.
by simple contract, II. 221—224, 265 n.
due to the king, II. 190, 221.
due to servants, clerks, workmen, II. 222, *ibid.*, n.
damages recovered against executor for injuries done by testator to the property of a third party payable as, II. 222.
party injured by *devastavit* is a simple contract creditor of executor, III. 606.
dilapidations by late incumbent of benefice, II. 222, 223.
with respect to payments by an executor *de son tort*, II. 224. (*See* EXECUTOR DE SON TORT.)
an executor may voluntarily pay an inferior debt without notice of a superior, II. 229.
he may plead a judgment for an inferior debt without notice, II. 229.
what is notice to bind him, II. 229.
docketing or registration of judgments, II. 203, 230, *et seq.*
unregistered judgments rank as simple contract debts, II. 203, 230.
notice of unregistered judgment will not give it preference, II. 230.
with respect to other debts there must be actual notice, II. 231.
executor's power of preference among creditors of equal degree, II. 256, III. 373 n.
how controlled by proceedings at law, or in equity, II. 256.
he can make voluntary payments after action commenced, II. 256.
he cannot pay in preference after a decree to account, or after judgment, II. 257.
but he may stand in the place of the creditors he has paid, II. 226 n., 257 n.
a creditor partly paid by an executor, will receive no further payment from the court until other creditors have been paid proportionably, II. 257.
executor's retainer for his own debt, II. 258, *et seq.*, 267 n. (*See* RETAINER.)
what passes by a bequest of "debts," II. 258, *et seq.*, 486 n.
satisfaction of, by legacy, II. 609, *et seq.*, 742.
release of, by legacy, II. 618, *et seq.*
effect of appointing debtor executor, II. 624, *et seq.*, 625 n., 627 n.
at common law, II. 624.
in equity, II. 628, 629 n.
rule in equity will now prevail, II. 625.
debt of personal representative is assets, III. 132 n.
liability of surety for it, *Ibid.*
enforced by successor, II. 113 n., 625 n.
by ancillary administrator, II. 627 n.
effect of committing administration to debtor, II. 626.
effect of appointing creditor executor, II. 629, *et seq.*
where creditor is sole executor, II. 629.
where one of several debtors has made the creditor executor, II. 631.
where a creditor is one of several executors, II. 631.
action by creditor administrator for his own debt against executor *de son tort*, II. 632.
bequest of, by creditor to debtor,
lapses by death of debtor before testator's, II. 499.

DEBT.—*Continued.*
is a mere legacy and the debt is assets, II. 618 n., 619.
recital of debt due from legatee evidence against him, II. 620, 621. (*See* II 338, 494.)
legacy of, II. 488, *et seq.*
when specific, II. 448—450.
when adeemed, II. 632—636.
set-off against legacy, II. 619 n.
against debts, II. 251 n.
overpayment, recovery of, III. 375 n.

ACTION OF, FOR EXECUTOR,
lies in respect of debts due to deceased, II. 2.
in respect of arrears of rent, II. 42, 43.
action of, on judgment, II. 102 n.

ACTION OF, AGAINST EXECUTOR,
did not formerly lie upon simple contract, III. 517.
but now by 3 & 4 Will. IV., c. 42, s. 13, such action may be maintained against an executor or administrator, III. 517.
for rent, III. 298. (*See* RENT.)
when to be brought in the *detinet*, and when in the *debet* and *detinet*, III. 298, *et seq.* (*See* RENT.)
IMPRISONMENT FOR, abolished by "Debtors Act, 1869," III. 638. (*See* NE EXEAT REGNO.)

DEBTS,
"all my just debts," meaning of, III. 166.
what passes by bequest of, II. 486, *et seq.*
locality as assets, III. 135 n.
sufficient to sustain foreign administration, I. 436 n.
constitute "*bona notabilia*," I. 338 n.

DECEIT,
action for, does not survive to executor, II. 4, 6, 27 n.
nor against him, III. 228, *ibid.*, n.

DECLARATION. (*See* REMEDIES.)

DECREE. (*See* REMEDIES.)
in equity,
against testator,
ranks in order of payment with a judgment at law, II. 204.
the executor formerly could not plead it at law, but must have had an injunction, II. 204.
what sort of decree entitled to this precedence, II. 204.
against executor,
must be paid before judgment subsequently obtained, II. 256.
effect of, in controlling executor's preference, II. 257.
creditor partly paid by executor will not be further paid by court until all the other creditors have been paid proportionably, II. 257.
for an account, etc., in a creditor's suit,
executor cannot pay in preference after, II. 257.
for administration,
injunction after to restrain creditor proceeding on a judgment, III. 483, 484.
cannot be made in absence of personal representative, III. 620.

DEED-POLL,
properly executed and attested may operate as a will, I. 149 n.

DEEDS,
belonging to inheritance do not pass to executor, I. 847.
nor the box in which they are kept, I. 847.
right of executor to possession of, II. 115.
power of executor to take out of chest in house of heir, II. 116.

DEER,
when they pass to the executor, I. 831, *ibid.*, n.
in an inclosed ground, may be distrained for rent, I. 831 n.

DEFAULTING EXECUTOR. (*See* DEVASTAVIT, REMEDIES.)
when entitled to costs, III. 641.

DEFENCES. (*See* PLEAS.)

DELEGATES. (*See* APPEAL.)
appeal to, formerly, I. 683.
practice as to appointment of, I. 683 n.

DELIRIUM. (*See* LUNATIC, INSANITY, DRUNKENNESS.)
what it is, I. 33.
distinction between, and insanity, as to proof of lucid interval, I. 33.

DELUSION,
what is, I. 25 n., 39 n., 41 n.
as evidence of insanity, I. 40 n.
defined, I. 40 n.
insane, indicated by what, I. 42 n.
temporary, I. 47 n.

DEMONSTRATIVE LEGACIES,
what they are, II. 439.
instances of, II. 450, 451.
ademption of, II. 439, 440.
abatement of, II. 439, 440, 675 n. 677.

DEMURRER,
objections formerly raiseable by, can now be raised on pleadings, III. 523 n.

DEPOSIT,
of wills, place of, I. 374, 378, 466.
of funds, diligence in, III. 362 n.
mingled with private funds, III. 364 n.

DESCENDANTS,
who entitled under description of, II. 391, 392, 393.
illegitimate son not, II. 513 n.
when they take *per capita*, and when *per stirpes*, II. 907 n.

DESCRIPTION,
of legatee, II. 339, *et seq.* (*See* LEGATEE.)
of legacies, II. 459, *et seq.* (*See* LEGACY.)

DESTRUCTION OF WILL,
remedy against executor for, I. 373.

DETINUE,
action of,
lies *for* executor if goods are taken from testator, II. 3.
lies *against* executor if goods taken by testator continue in his hands, III. 101 n., 229.

DEVASTAVIT. (*See* ACCOUNTS, ALLOWANCES, ASSETS.)
definition of, III. 321.
governed by what law, III. 352 n.
affected by testamentary directions, III. 352 n.
by directions of court, III. 361 n.
by pendency of war, III. 357 n., 361 n.
barred by statute of limitations, III. 352 n.
in capacity of executor or trustee, III. 378 n.
proof of negligence, III. 354 n.
measure of damages, III. 354 n.
liability continues after resignation, III. 353 n.

DEVASTAVIT.—*Continued.*
of heirs for, III. 174 n., 207 n., 217 n.
of legatees for, III. 217 n.
of successor for, II. 112 n., 113 n.
of surety, I. 640 n., 647 n.
to successor, II. 159 n.
presentment of claim for, II. 236 n., 237 n.
instances of,
by direct acts of abuse, III. 322.
by misappropriation of assets, III. 377 n.
by fraudulent sales, III. 377 n.
by distribution before payment of debts, III. 375 n.
or with undue delay, III. 376 n.
to wrong party, III. 375 n.
to party under disability, III. 376 n.
to legatee, disregarding condition, III. 376 n.
in abuse of discretion given, III. 377 n.
of statutory allowance to family, III. 376 n.
by delivering a sealed packet unopened, I. 470.
by mal-administration, III. 322.
under expenses of funeral, II. 166, *et seq.*
payment of debts out of legal order, III. 323, 374 n.
not without notice, III. 323.
to himself or his firm, III. 373 n.
payment in disregard of set-off, III. 373 n.
assent to legacy, when fund insufficient for creditors, II. 653, *et seq.*, III. 323.
quære, if without notice, II. 656, *et seq.*, III. 323.
how executor may protect himself, III. 323, 324.
not preserving a term for years, III. 324.
in trust to attend inheritance, III. 324.
compounding or releasing debts no *devastavit* by Conveyancing Act, 1881... III. 324.
semble this does not affect an administrator, III. 325.
old law applicable to administrator, III, 325—327.
release of claims, III. 362 n.
arbitration, reference or compromise, *Ibid.*
extension, III. 361 n.
surrender of collateral, III. 362 n.
by unnecessary payments, III. 327, 373 n.
how executor making, should sue to recover, II. 82.
of joint bond, III. 328.
of void bond, III. 328.
of debt partly paid, III. 375 n.
executor not bound to plead statute of limitations, III. 328, 329, 374 n.
unless order for administration or its equivalent has been made, III 329, *ibid.*, n.
by negligence, III. 330.
in not selling assets, III. 330.
in not investing assets, II. 711.
in not assigning an onerous lease, III. 254 n.
in not paying debts carrying interest, III. 330.
he may pay simple contract debts before specialty bearing interest, if assets sufficient, III. 331.
in not getting debts in, III. 331.
enabling creditor to plead statute of limitations, III. 331.
in not bringing actions, III. 331, 359 n., 360 n.
in not filing bill to vacate fraudulent conveyance, III. 360 n.
in not defending suits, III. 360 n.
in not taking security for co-executor's default, III. 360 n.
in managing real property, III. 372 n.
in making sale of land, III. 371 n.
in not filing inventory, III. 353 n.
or account, III. 353 n.
by loss of assets, III. 332. Stat. 22 & 23 Vict. c. 35, s. 31, 1826. (*See* also, III. 115—117.)

DEVASTAVIT.—*Continued.*
old rule at law, III. 333.
in equity, III. 333.
modern rule, willful default must be charged, III. 333.
loss by theft or casualty, III. 333.
by invalid security, III. 333—335.
where the will directs the investment of the estate in real or personal securities, III. 336, 366 n.
by fall of stocks, III. 336, 370 n.
by continuing trade of testator, III. 305, *et seq.*, 315 n., *et seq.*
by not investing in the proper stock, III. 337, 366 n.
investments authorized, III. 337—341, 368 n., 370 n.
by retaining in hand, or by investing on a deficient security III. 343.
by loan to co-executors, III. 336, 365 n.
by improper loans, III. 364 n.
by negligence in collecting, III. 353 n., *et seq.*
by not calling in money on security, III. 344.
by failure of banker, agent or solicitor, III. 346—348, 362 n., 364 n. (*See* III. 351, 352.)
general result of all the authorities as to the loss of assets, III. 349.
provision of Conveyancing Act, 1881, as to receipt of purchase-money by solicitor, III. 350.
executor may appoint solicitor to receive and give discharge for money under Trustee Act, 1888. .. III. 351.
or a banker or solicitor to receive proceeds of policy of assurance, III. 351.
in what cases an executor is liable for the *devastavit* of his co-executor, III. 379, *et seq.*, 393 n., *et seq.* (*See* CO-EXECUTOR.)
executor liable for acts of co-executor as for those of a stranger intrusted by him, III. 380.
executor trustee who stands by and sees breach of trust committed by co-trustee, III. 384.
not protected by the usual indemnity clause, III. 385.
every trust instrument to be deemed to contain clauses, for the indemnity as to loss of assets and reimbursement of trustees, stat. 22 & 23 Vict. c. 35, s. 31, III. 385.
executor joining in a receipt with co-executor, III. 386, 389.
executor renouncing after an act of administration, III. 386—388.
executor who has proved, but who declines to act, III. 386.
when a *devastavit* is released by concurrence or acquiescence, III. 357 n., 358 n., 389.
breach of trust committed at instigation of *cestui que trust*, III. 390.
distinction between creditors and legatees as to liability of executor, III. 390.
creditor who misleads an executor cannot complain of insufficiency of assets, II. 657 n., III. 542.
of *feme covert* executrix, III. 391, *et seq.*
law since Married Women's Property Act, III. 391.
wife alone liable unless husband intermeddles, III. 391.
law before Married Women's Property Act, III. 392.
husband liable for *devastavit* before marriage as well as after while coverture lasted, III. 392.
his liability after determination of coverture for assets come to his hands, III. 393.
his estate liable after his death, III. 393.
where a payment by executor amounts to, he may sue to recover it back in his representative character, II. 82.
executor of executor, III. 554.
not liable for, at common law, III. 229, 554.
stat. 30 Car. II. c. 7, III. 229, 554.
party injured by, is a simple contract creditor of executor, III. 606.
is a debt by executor due from the time of committing, and not from decree for payment, III. 607.
as to abatement of legacies, where the estate becomes insufficient by the *devastavit* of the executor, II. 667, *et seq.*
remedy for, in equity, III. 606, *et seq.* (*See* REMEDIES.)

DEVASTAVIT.—*Continued.*
what is a conversion by the executor, III. 605.
following assets, III. 606.
in case of a bankrupt executor, III. 607.
retainer for, by co-executor, II. 619 n.
remedy for, against executor of executor, III. 554.
debt on a judgment against first executor suggesting a *devastavit*, III. 549, 554.
scire fieri inquiry as to, by sheriff, III. 547.
what is a good finding of a *devastavit* in his return, III. 548.
effect of lapse of time on, in equity, III. 628 n., *et seq.* (*See* II. 657 n., 660 n.)
question of, may be tried in a suit within the jurisdiction of the County Court, III. 519 n.

ACTION OF DEBT SUGGESTING,
upon judgment against executor, III. 548.
its nature, III. 549.
when brought, III. 549.
form of, III. 549.
pleas in, III. 549.
executor cannot plead *plene administravit*, III. 549.
evidence in, III. 550.
judgment in, III. 550.
how to be brought by executor of him who obtained judgment, III. 551.
against executor of executor, III. 550.
against husband of executrix, III. 393.
upon judgment of execution, III. 552.
not on judgment against testator, III. 550.
remedy on judgment against testator, III. 551.

DEVISE. (*See* WILL.)
general, what it includes, I. 264 n., II. 328 n. (*See* WILLS ACT, s. 26. PREFACE.)
when vested or contingent, I. 355 n., II. 548 n. (*See* VESTED LEGACIES.)
not restricted to real estate, I. 94 n.
identified by parol evidence, II. 491 n., 493 n.

DEVISEE,
when entitled to be exonerated by the executor, III. 147, *et seq.* (*See* EXONERATION.)
his right of retainer, II. 261 n., 262 n.
remedy against real assets in hands of, 1 Wm. IV. c. 47, III. 140, *et seq.*
suit in County Court by, where estate does not exceed 500*l.*, III. 668.
may proceed by originating summons, III. 487.
who can be a devisee, II. 269 n., *et seq.*
liable for legacy charged, III. 202 n.
statutory liability for debts, III. 204 n., *et seq.*

DILAPIDATIONS,
damages for, against the representatives of the late incumbent, in what order payable, II. 222, 223.
provisions of Ecclesiastical Dilapidations Act, 1871, as to, II. 222, 223, III. 237.
what are dilapidations, III. 235, 236.
action for, against executor of rector at common law, III. 235, 236.
to what extent he is liable, III. 238.
liability of executor for under the Ecclesiastical Dilapidations Act, 1871... II. 223, III. 238 n.
of mansion house,
executor of tenant for life without impeachment of waste not liable for, in equity, III. 233.

DIRECTIONS,
of will,
as to investments, III. 366 n., 369 n.
disobedience to, a breach of administration bond, III. 366 n.
to executor,
bill in equity for, III. 509 n.

DISABILITIES,
of testators, I. 11, *et seq.* (*See* WILL, *Who is Capable of Making.*)

DISALLOWANCE,
of claim,
by personal representative, II. 247 n.
immediate action required, II. 248 n., III. 568 n.

DISCHARGE,
on accounting, II. 424 n.
on resignation, I. 713 n.

DISCLAIMER. (*See* RENUNCIATION.)
of trusts cannot be made by executor who takes probate, III. 321.

DISCOVERY,
actions for, may be brought against executor before probate, I. 370.
very rare since Judicature Act, I. 370 n.
bill in equity for, III. 509 n.
by creditor, II. 211 n.
summary proceedings for discovery of assets, II. 182 n., III. 509 n.
of administrator's own debt, II. 626 n.
of partnership books, II. 162 n.

DISCRETION,
of trustees or executors where the court will interfere with, III. 366 n., 608.
not interferred with by issue of originating summons, III. 608.

DISSENT,
widows, II. 788 n—791 n.
effect of, II. 793 n—795 n.
(*See* ELECTION.)

DISTRESS,
remedy against executors by, III. 554.
by heir of cattle of executor *damage feasant*, II. 185.
executor's power to distrain, II. 116—119.
accrues from the death of testator before probate, I. 759.
executor of a lessee for years who underlets, II. 116.
executor of a man seized of rent,
could not distrain at common law for rent incurred in testator's life, II. 42, 116.
stat. 38 Hen. VIII. c. 37, II. 40, 43, 116, 119.
executors may have action and distrain for rent due to testator in his life, II. 117.
distress for a rent the estate whereof depends upon another's life, being dead, II. 117.
construction of the statute, II. 117, *et seq.*
whether it extends to executors of a man seized in fee demised for years, II. 119.
it applies only to cases in which the testator might have distrained, II. 117.
in whose hands the land must be, II. 117.
what manner of rents are within it, II. 118.
issuing out of copyhold, II. 118 n.
executors of landlord may distrain on land demised for any term, or at will, as landlord himself might, II. 119.
stat. 3 & 4 Wm. IV. c. 42, II. 119.
executors may join in distraining or distrain alone, II. 119.
executor of administrator who has underlet cannot distrain, II. 119, 120.

DISTRIBUTION,
period of in gifts to a class, II. 340, *et seq.*

UNDER AMERICAN STATUTES,

II. 844 n., 854 n., 862 n., 886 n., 909 n., 925 n.
what law governs, I. 268 n., II. 844 n., 925 n.

DISTRIBUTION.—*Continued.*
by order of Probate Court, II. 844 n.
conclusive in collateral action, I. 676 n.
statutory time for, II. 845 n.
after payment of debts, II. 845 n.
discretion given by will, III. 377 n.
action for share, after settlement of account, II. 846 n.
at law, III. 559 n.
on bond, I. 648 n., 650 n.
in equity, III. 655 n.
in Probate Court, III. 665 n.
statute of limitations, III. 572 n.
sale of land for, III. 167 n., 178 n.
in property, II. 846 n.
to executor of deceased distributee, II. 847 n.
guardian of minor, II. 847 n.
self as trustee or guardian, II. 847 n., III. 378 n.
to reimburse advances, II. 850 n.
husband of distributee, II. 847 n.
assignee, II. 847 n.
attaching or judgment creditor, II 848 n.
release of share, II. 848 n.
receipt for, II. 848 n.
set-off against, II. 849 n.
(and *see* ADVANCEMENT.)
refunding bond, II. 850 n.
rights of husband, II. 854 n., *et seq.*
rights of widow, II. 862 n., *et seq.*
statutory election, II. 863 n.
allowance for support, II. 865 n.
amount, II. 867 n.
transmission, II. 869 n.
forfeiture, II. 869 n.
homestead right, II. 870 n.
statutory exemption, II. 870 n., *et seq.*
dower, II. 870 n.
rights of children, II. 886 n., *et seq.*
allowance for support, II. 865 n., 867 n.
who are entitled, II. 886 n.
adopted children, II. 886 n., 913 n.
illegitimate, II. 887 n., 912 n.
advancements, II. 889 n.—900 n.
rights of next of kin, II. 909 n., *et seq.*
parents, II. 909 n., 911 n.
grandparents, II. 911 n.
step-father, II. 911 n.
half-blood, II. 910 n., 912 n.
blood of ancestor, II. 910 n.
brothers and sisters, II. 911 n.
right of representation, II. 911 n.
nephews and nieces, II. 911 n.
uncles, aunts and cousins, II. 912 n.
aliens, II. 913 n.
escheat for want of kin, II. 913 n.
UNDER THE STATUTE 22 & 23 Car. II. c. 10, II. 840, *et seq.*
origin and object of statute, II. 840.
provisions of, II. 841—843.
construction of, I. 497.
no suit for, to be entertained in Probate Court, III. 663.
if a person entitled die within the year, his executor may claim, II. 928, 929.
effect of agreement as to distributive share, II. 844.
no action at law lies for it, III. 517.
estate of an intestate bastard, or person without kin, II. 908.
persons taking under, take as tenants in common, II. 400 n.
rights of husband, II. 853. (*See* II. 400 n.)
paramount to 22 & 23 Car. II. c. 10, II. 400 n.

DISTRIBUTION.—*Continued.*
stat. 29 Car. II. c. 3, s. 25, II. 853.
rights of husband's representative, if he dies without taking administration, II. 854.
or without having fully administered, II. 854.
rights of widow, II. 857—862. (*See* II. 400 n.)
when barred by settlement, II. 858.
by provision by will, in lieu of thirds, II. 859.
when she cannot claim both her distributive share, and money due under a covenant for her provision, II. 860.
when she may claim both, II. 860—862.
provisions of Intestates Estates Act, 1890, where intestate leaves no issue, II. 857.
in such case widow takes £500 or the whole estate if less, II. 857.
how such sum to be borne and raised, II. 858.
rights of children, II. 877—886.
their "representatives," II. 877.
1. where none of intestate's children are dead, II. 877.
2. where all the intestate's children are dead, leaving children, II. 877, 878 n.
3. where some of the intestate's children are dead, leaving children, II. 878.
half-blood, II. 878.
posthumous child, II. 878.
an only child, II. 878.
advancement, II. 879—886.
operates only in distribution of the estates of intestate fathers, II. 880.
does not operate in cases of *quasi* intestacy, II. 880.
children of deceased child must bring in their father's advancement, II. 880, 881.
a child shall bring in his advancement among the other children only, and not for the widow, II. 881.
advancement by settlement of land, II. 882.
what land is within the statute, II. 883.
advancement out of personal estate, II. 882—886.
what is considered so, II. 882—884.
what is not, II. 884—885.
rights of next of kin, II. 901, *et seq.* (*See* also II. 398, *et seq.*)
who are next of kin, II. 901. (*See* also I. 496, *et seq.*)
right of the father, II. 901.
right of the mother, II. 901.
brothers and sisters shall share with her, II. 901.
although the intestate left a widow, *ibid.*
if no brothers are alive of intestate, nephews, etc., shall share with their grandmother, II. 902.
the representatives of brothers and sisters beyond their children, shall not share, II. 902.
brothers and sisters of the half-blood shall share with her, II. 902.
when she shall take the whole, II. 902.
mother-in-law or step-mother have no right, II. 903.
right of brothers and sisters, II. 904.
preferred to grandfather, etc., II. 904.
grandfather preferred to uncle, II. 905.
great grandfather shall share with uncle, II. 905.
grandfather by mother's side, II. 905.
uncles and nephews, II. 905.
half-blood, II. 905.
posthumous, II. 905.
relatives by marriage not entitled, II. 906.
no representation among collaterals after brothers' and sisters' children, II. 906.
i.e. brothers and sisters *of the intestate*, II. 906.
when they take *per capita*, II. 907 n.
when *per stirpes*, II. 907, *ibid.*, n.

DISTRIBUTION.—*Continued.*
OF THE EFFECTS OF AN INTESTATE DOMICILED ABROAD, II. 914—927.
it shall be according to the law of the country of domicil, II. 914, 925 n.
rules for ascertaining the domicil, II. 918—927.
distribution made in ancillary jurisdiction, I. 443 n., III. 926 n.
or transfer of funds to place of domicil, I. 268 n., 443 n., III. 927 n.
after payment of all local debts, I. 445 n.
and of all debts proved in the ancillary jurisdiction, III. 926 n.

UNDER THE CUSTOMS OF LONDON AND YORK,
saved by the statute of distributions, II. 841.
customs of London and York abolished as to the estates of persons who have died on or after Jan. 1, 1857, stat. 19 & 20 Vict. c. 94, II. 929.
old law as to, II. 929.

DISTRICT REGISTRIES. (*See* COURT OF PROBATE.)
of Probate Division, I. 381.

DIVESTING. (*See* LAPSED LEGACIES—CONDITIONAL LEGACIES.)
of a vested share in distribution, II. 64.

DIVIDENDS,
of stock, not apportionable at common law, II. 43, 50 n.
case of tenant for life of, dying on the day they become due, II. 43.
now apportionable by Apportionment Act, II. 43.
what included in, in this act, II. 45.
bequest of, passes the principal, II. 478, *et seq.*

DIVORCE,
when husband loses right of administration to wife by, I. 491 n.
when widow loses right of administration to husband by, I. 496, 531 n.
legacy by, II. 431 n, 732 n.

DOCKETING,
of judgments, II. 202, 231. (*See* JUDGMENTS.)

DOCUMENTS,
production of in administration action, III. 597. (*See* PRODUCTION.)

DOGS,
pass to executor, I. 830, *ibid.*, n.

DOMESTIC EXPENSES,
what shall be allowed in executor's accounts, III. 327 n., 425 n.

"DOMESTIC USE AND ENJOYMENT,"
articles of, what they include, II. 470 n.

DOMICIL. (*See* FOREIGNER, ALIEN.)
definition of, II. 918 n.
country of,
the law there shall regulate the validity of wills proved here, I. 438, *et seq.*, 679 n.
and also the construction, II. 339, 369. (*See* also, I. 444, 445 n.)
so as to title to letters of administration, I. 484 n., 506.
so as to distribution of the effects, II. 188, *et seq.*, II. 914 *et seq.*, 925 n., III. 108, *et seq.*
so as to exoneration of real estate, III. 147 n.
but not as to descent of real estate, II. 914 n.
as to succession tax, III. 1 n.
but administration of the estate must be where possession taken, II. 915, *et seq.* (*See* III. 107 *et seq.*)
decision of Court of domicil binding on Court of this country, II. 917, 918.
status of child depends on status of putative father, II. 922 n. (*See* II. 370 n., 923.)
how the law of the foreign country is to be certified, I. 505 n.

DOMICIL.—*Continued.*
how far a British subject can select a foreign domicil in derogation of his British, II. 924.
of deceased, its effect on the liability of his estate to legacy duty, III. 83, 86—88.
rules for ascertaining the domicil, II. 918, *et seq.*
distinction between domicils of choice and of origin, II. 921 n.
Anglo-Indian, what it is, II. 922 n., 924.
Anglo-Egyptian no such thing, II. 924 n. (*See* I. 441 n.)
nor Anglo-Chinese, II. 924 n.
law of the country of domicil will not prevail against a will, made under a power, of property situate in this country, I. 446.
what is meant by "the law of the country of domicil," I. 440, II. 914 n.
law of, as affecting wills changed by stat. 24 & 25 Vict. c. 114, I. 446.
wills made by British subjects abroad to be admitted if made according to law of the place, or where testator was domiciled or had domicil of origin, I. 446.
also wills made by British subjects in this kingdom, if made according to local law, I. 447.
change of, not to invalidate will, I. 447.
law as to such wills before Aug. 6, 1861. . . I. 440.
when will of British subject domiciled abroad may be invalid since Aug. 6, 1861, I. 440 n.
may be defined by order in council pursuant to stat. 23 & 24 Vict. c. 121, II. 924.
arises from connection with locality not from society, I. 441 n.
foreign court will grant ancillary probate where necessary to recover estate, I. 437, *ibid.*, n.

DONATIO MORTIS CAUSÂ,
definition of, I. 887.
requisites of, I. 887, *et seq.*
a trust may be annexed to it, I. 890.
delivery of, I. 889, 897 n.
what is sufficient when the subject is incapable of actual transfer, I. 690.
what may be the subject of, I. 891—893.
bank notes, I. 892.
bonds, I. 892.
negotiable instruments passing by delivery, I. 891, *ibid.*, n.
payable to order though unindorsed, I. 891 n.
wife may make, of her separate property, I. 78 n.
mortgage deeds, I. 892.
policy of insurance, I. 892.
banker's deposit note, I. 892, *ibid.*, n.
not receipts for stock, I. 893.
not notes drawn by the deceased in his last illness, I. 893.
not checks on bankers unless *semble* parted with for valuable consideration or paid before testator's death, I. 893 n.
how it differs from a legacy, I. 894.
evidence of, I. 887 n., 888 n., 895, 896.
subject to legacy duty, I. 895, III. 12, 37.
subject to probate duty, I. 895 n.. III. 37 n.
to debts, I, 895.
how it differs from a gift, *inter vivos*, I. 895, 897 n.
may be satisfied by a legacy, I. 895.
cannot be revoked by subsequent will, I. 895, 897 n., 216 n.
not abolished by Wills Act, I. 896.
executor may recover in replevin, II. 27 n.

DOUBLE PORTIONS. (*See* ADEMPTION—SATISFACTION.)
presumption against, how repelled, II. 647.
by parol evidence, II. 647, *et seq.*

DOUBLE PROBATE. (*See* PROBATE, *manner of obtaining.*)
what it is, I. 462.

DOVES,
when they pass to executor, I. 831.

DOWER, II. 771, 870 n. (*See* WIDOW.)
tenant in, when she or her executors are entitled to emblements, I. 841.
legacy in lieu of, II. 713 n.
abatement of, III. 216 n.
annuity in lieu of dower, apportioned, II. 49 n.
sale of land by Probate Court subject to, III. 180 n.

DRAFT. (*See* CONSTRUCTION—EVIDENCE.)
of a will when it may be used in evidence, I. 193, 421.

DRUNKENNESS,
when a ground of incapacity to make a will, I. 50, 51 n.
or to revoke one, I. 199 n.

DUCHY OF CORNWALL,
grant of administration to intestate dying in granted to Duke of Cornwall, I. 511.

DUCHY OF LANCASTER,
Sovereign entitled in right of to goods of intestate dying therein without next of kin, I. 509 n.
administration in such case granted to solicitor for affairs of, I. 511.
administration bond not given by solicitor to, but liable as if it were, I. 615 n.
Intestates Estate Act, 1884, applies to, I. 512.

DUMB,
capacity of, to make a will, I. 18, 19.

DUNG,
in a heap, is a chattel, I. 853.

DUPLICATE WILLS,
revocation of, I. 205.
presumption that the destruction or mutilation of one revokes the other, I. 206.
when both instruments are in the possession of the testator, and only one is in part cancelled, I. 206.
if the testator has the custody of one of two duplicates, and it be found cancelled, or cannot be found, the presumption is, that he cancelled it *animo revocandi*, I. 207.
one only probated, I. 375. n.
must be brought into Probate Court if required, I. 374, 392 n.

DUTY, I. 723, *et seq.*, I. 733, *et seq.*, III. 1, *et seq.*, III. 39, *et seq.*, III. 66, *et seq.* (*See* ESTATE DUTY—LEGACY DUTY—PROBATE DUTY—SUCCESSION DUTY.)

EAR-MARKING MONEY.
in hands of executor, III. 595, 605 n.

EAST INDIES. (*See* INDIA.)

ECCLESIASTICAL COURT. (*See* COURT OF PROBATE—PROBATE—REMEDIES.)

EFFECTS,
collection of, by executor, II. 185
what passes by a bequest of, II. 459, 462 n.
"household effects," II. 470.
where described as in a particular place, II. 459—465.

EJECTMENT,
by executor,
action by personal representative, II. 20 n., 23 n., 50 n., III. 472 n.
revived by executor, II. 101 n.

EJECTMENT.—*Continued.*
lies whether ouster was before or after testator's death, II. 5, 78.
demise laid two years before probate, good, I. 759.
two out of three executors may recover in on joint claim, III. 452.
by administrator,
when demise to be laid, I. 761, 762 n.
against executor,
for a recovery of a leasehold for years by a devisee after assent, III. 518.
verdict in, not admissible as evidence in a testamentary cause, I. 423.
service on one of two co-executors in possession a sufficient service in an action of, III. 520.
by heirs, II. 53 n.
by infant heir for land sold by executor, I. 244 n.
by posthumous child, omitted in will, I. 243 n.
by devisee under unprobated will, I. 674 n.
probate questioned in, I. 675 n., 677 n.

ELDEST SON,
when younger child is considered, II. 355, *et seq.*
when eldest child considered younger, II. 357.
time of ascertaining, II. 356 n.

ELECTION,
to take converted property in its actual state, I. 783 n., 801 n. (*See* CONVERSION.)
widow barred of paraphernalia by election to take as legatee, I. 885.
power by executor,
where testator was entitled to take choice of several chattels, II. 131.
power of, by legatee, from a certain number of stock, II. 767.
doctrine of, as to legacies, II. 767, *et seq.*, 773 n.
to what cases applicable, II. 769.
only applicable as between a gift under a will and a claim *dehors* the will, II. 769, 770, 773 n.
no election where testator makes void appointment, II. 767.
nor where beneficiary has no property to give up, II. 769, 773 n.
heir at law, II. 769.
widow entitled to dower, II. 771.
stat. 3 & 4 Wm. IV. c. 105, in effect abolishes election as affects dower, II. 771
where there are two bequests to the same person, the one onerous and the other beneficial, II. 772.
what constitutes an election, II. 772.
effect of an election, II. 772.
of executor to take as legatee, II. 685, *et seq.*
a personal right, II. 778 n.
how exercised by infant, II. 778 n.
by feme covert, II. 778 n.
by lunatic, II. 778 n.
when implied, II. 779 n., 783 n., 789 n.
revocation of, II. 780 n., 781 n.
acquiescence in will presumed, II. 788 n., 789 n.
widow's statutory dissent, II. 784 n., *et seq.*
effect of dissent, II. 793 n.
on remainders, II. 795 n.
on legacies, II. 795 n.
on widow's share, II. 864 n., 866 n.
on advancements to children, II. 890 n.
by life tenant, accelerates remainder, II. 535 n.

ELEGIT,
estate by, goes to executor, I. ,811. (*See* II. 8 n.)

EMBLEMENTS. (*See* FIXTURES; AGRICULTURAL HOLDINGS ACT.)
definition of, I. 835.
what produce are, I. 835, *et seq.*, 843 n.
such only as repays the labor within the year, I. 837.
considered generally as chattels, I. 835 n.

EMBLEMENTS.—*Continued.*
when executor entitled to, I. 838, *et seq.*, 843 n.
as against heir, I. 838.
as against a devisee, I, 838, 839.
right of executor of tenant for life, I. 840.
by stat. 14 & 15 Vict. c. 25 s. 1, where landlord tenant for life tenant at rack rent shall continue to hold for year instead of having emblements, I. 840 n.
right of executors of clergy, I. 841.
parson resigning his living not entitled to, I. 841 n.
right of executor of dowress, I. 841.
executor of her husband, I. 842.
right of executor to one seized *jure uxoris*, I. 842.
when husband and wife are joint tenants, I. 842.
right of executor of jointress, I. 842.
effect of Married Women's Property Act, I. 842 n.
right of executor of tenant by curtesy, I. 842.
right of executor of tenant at will, I. 842.
entry, egress, and regress to take, I. 843.
do not give a title to exclusive occupation, I. 843.
whether executors of lessee shall pay rent till the corn is ripe, I. 843.
executor has trover for crops, II. 28 n.
executor may sell growing crops, II. 132 n.
may cultivate, when, II. 198 n.

EMPLOYERS' LIABILITY ACT, II. 12. (*See* ACTIONS.)

ENTITLED,
word construed "entitled in possession," II. 329, 557 n.

ENTRIES,
admissibility in evidence of, made by deceased executor against his interest, III. 556 n.

ENTRY,
when necessary to complete executor's title, I. 764.
before, executor not liable as assignee of testator's term, III. 258, *ibid.* n.
but liable for rent so far as he has assets, III. 259. (*See* EXECUTOR, *liability.*)

EQUITABLE ASSETS, III. 124, *et seq.*, 138 n. (*See* ASSETS.)

EQUITABLE CONVERSION, I. 783, *et seq.* (*See* CONVERSION.)

EQUITABLE EXECUTION, III. 241 n., 469 n. (*See* EXECUTION.)

EQUITABLE WASTE, I. 834. (*See* WASTE.)

EQUITY,
cannot set aside a will for fraud, I. 54, 654, *et seq.* (But *see* I. 423 n., III. 657 n.)
courts of, are courts of construction of wills, I. 355, 356, 667 n. (*See* I.662, III. 667 n., *et seq.*, and CONSTRUCTION.)
in what cases it will interfere with respect to probate, etc., I. 657, *et seq.*, 677 n., III. 656 n.
equitable conversion, I. 783, *et seq.* (*See* CONVERSION.)
decree in. (*See* DECREE.)
remedies for and against executors in. (*See* ADMINISTRATION, ACTION, REMEDIES.)
under Judicature Act, rules of, to prevail when there is any conflict between those of law and equity, I. 769, II. 124 n.
wife's equity to a settlement, II. 733, *et seq.*
(*See* PAYMENT OF LEGACIES.)
equity of redemption whether legal or equitable assets, III. 126.
equity principles govern in Probate Court, I. 543 n.

EQUIVOCATION, II. 429, *et seq.* (*See* AMBIGUITY, LEGATEE.)

ERASURE. (*See* ALTERATIONS, EVIDENCE.)
in will presumption as to, I. 161 n., 185—187, 424.
partial revocation of will by, I. 183 n., 195, *et seq.*

ESCAPE. (*See* SHERIFF.)

ESCHEAT,
lands coming to lord by, are assets, III. 214 n.

ESCROW,
liability of executor of testator delivering deed as, III. 278.

ESTATE,
OF AN EXECUTOR OR ADMINISTRATOR.
AT WHAT TIME IT VESTS, I. 759, *et seq.*
estate of executor, I. 759.
estate of administrator, I. 760—763.
between the death of the deceased and the administration grant property to vest in the judge, I. 764.
distinction between chattels real and personal, as to time of vesting in possession, I. 764.
ITS QUALITY, I. 765, *et seq.*, 774 n.
not forfeited by attainder of executor, etc., I. 765.
not applicable to executor's debts to the crown, I. 765.
where executor becomes bankrupt, goods of testator do not pass, I. 766.
it operates as a forfeiture of a lease containing clause to that effect, though the lease does not pass to the assignees, I. 766, 767.
receiver to whom assignees may account, I. 767.
executor bankrupt and residuary legatee, I. 767.
it cannot be taken in execution for debt of executor, I. 767, *ibid.*, n.
exceptions from this rule, I. 767 n., 768.
doctrine of merger respecting, I. 768, 769.
abolished by Judicature Act when no merger in equity, I. 769.
will still be merger where executor has estate in his own right, I. 769.
how the effects which an executor takes as such may become his own, I. 772—774, III. 322 n.
different rule in equity, I. 773 n.
quære as to effect of Judicature Act on rule, I. 773 n. (*See* I. 772 n.)
executor cannot bequeath it, I. 770.
executor may alien the assets, I. 770, II. 120, *et seq.*
grant of *omnia bona sua* by executor, I. 770.
release of all demands by executor, I. 770.
feme covert executrix since December 31, 1882, cannot be controlled by her husband, I. 770. (*See* I. 273, III. 391; and HUSBAND AND WIFE.)
when an executor will gain a settlement by estate, I. 771.
executor not to be protector of a settlement in respect of estate as such, I. 771.

QUANTITY OF ESTATE IN POSSESSION, I. 775, *et seq.*
of an executor and administrator is the same, I. 775.
the whole personal estate vests in the executor or administrator, I. 775.
unless estate in joint-tenancy, I. 775.
except in case of partners in trade, etc., I. 775, 776.
rights of executor of one of several partners, I. 777, 793 n.
in what cases the title goes to the executor, where the deceased had only a special property, I. 777.
community property, I. 794 n.
surplus after foreclosure sale, I. 819 n.
option to purchase held not to pass to executor, I. 778.
real property, I. 778, *et seq.*, III. 183 n. (*See* also I. 769, II. 121, and POWER.)
in what cases an executor takes the fee in trust to sell, or merely a power, I. 778.
rule is that intention of testator must be gathered from whole will, I. 778.
in what cases the executors shall have a power to sell land by implication, I. 779.
no power where estate devised specifically subject to debts, I. 780 n.

ESTATE.—*Continued.*
administrator with will annexed has no power to sell under will or under 22 & 23 Vict. c. 35, I. 781 n.
executor devisee of subject to debts can make good title to purchaser who does not know that debts are paid, I. 781 n.
presumption that debts are paid after twenty years, I. 781, III. 629 n.
no such presumption in case of leaseholds, I. 781 n., III. 629 n.
held by testator as sole trustee vests in, III. 122.
whether a mere charge of debts on land gives such an implied power, stat. 22 & 23 Vict. c. 35, ss. 14, 16. . . I. 779—781.
the proceeds are equitable assets, I. 782, III. 127.
the doctrine of equitable conversion, I. 783, *et seq.* (*See* CONVERSION.)
land considered as money and money as land, I. 783.
land contracted to be sold, I. 784, 785.
compulsory sales under act of parliament, I. 785 n., 792.
money covenanted to be laid out in land, I. 785.
conversion "out and out," I. 786.
for particular purposes which fail, I. 787.
mixed fund from produce of real and personal estate, I. 787—790.
property purchased with partnership capital, I. 790.
property altered in nature by trustees of infant, I. 790.
by committee of lunatic I. 791.
by compulsory sale of lunatic's lands, I. 792.
chattels real, I. 807, *et seq.*, 817 n.
next presentation to a church, I. 807.
archbishop's options, I. 809.
estates for years, I. 809.
for so many years, if *A. B.* shall so long live, I. 810.
lessee for years granting an estate for life, I. 810.
to *A.* for life, and if he die within a certain term, to his executor for that term, I. 810.
estates by statute staple, etc., I. 811.
lease for years to one and his heirs, I. 811.
to a sole corporation and his successors, I. 811.
devised in tail, I. 811.
to *A.* for life, and afterwards to his heirs general or special, I. 812.
tenancy from year to year, I. 813.
leases of incorporeal hereditaments, I. 813.
in joint-tenancy, do not pass, I. 814.
vest in executor though specifically devised, I. 814.
the executor cannot waive a lease though worth nothing, I. 814. (But *see* III. 261.)
equitable interest in term, I. 814.
estate *pur auter vie*, I. 814.
effect of 1 Vict. c. 26, I. 814.
mortgages, I. 815, 818 n.
part of the personal estate, I. 815.
when heir entitled, I. 816.
when a mortgage merges, I. 816. (*See* SWABEY *v.* SWABEY, 15 Sim. 106, and I. 749.)
executor of mortgagor, in case of mortgage with power of sale, I. 817.
land devised to executors for payment of debts, I. 817.
with relation to husband and wife, I. 820, *et seq.* (*See* HUSBAND AND WIFE.)
by condition, I. 828.
by remainder, I. 828.
contingent and executory interest, I. 828.
lease for life, remainder to the executors of lessee, I. 828, 829.
chattels personal, I. 830, *et seq.*
chattels animate, I. 830—832.

ESTATE.—*Continued.*
domitæ naturæ, I. 830.
feræ naturæ, I. 830.
per industriam, I. 831.
propter impotentiam, I. 831.
what animals are incident to the inheritance, I. 831.
if the deceased was a termor for years, they go to the executor, I. 832.
chattels vegetable, I. 833, *et seq.*
trees and fruits not severed, I. 833, 843 n.
certain cases where growing trees go to executor, I. 833.
when trees, &c., that are severed, go to executor,, I. 834.
emblements, I. 835, *et seq.* (*See* EMBLEMENTS, AGRICULTURAL HOLDINGS ACT.)
what produce are emblements, I. 836, 837.
second year's crop, I. 837.
when executor entitled to, I. 838, *et seq.*
as against heir, I. 838.
as against devisee, I. 838.
right of executor of tenant for life, I. 840.
right of executors of clergy, I. 841.
right of executor of dowress, I. 841.
executor of her husband, I. 842.
right of executor of one seized *jure uxoris*, I. 842.
when husband and wife are joint-tenants, I. 842.
right of executor of jointress, I. 842.
right of executor of tenant by curtesy, I. 842.
right of executor of tenant at will, I. 842.
entry, egress, and regress to take, I. 843.
heir-looms, I. 844, *et seq.* (*See* HEIR-LOOMS.)
what they are strictly, I. 844.
chattels in the nature of, I. 846.
chattels devised or settled as, I. 848.
chattels which go to the successor of a corporation sole in the manner of, I. 849.
fixtures, I. 851, *et seq.*, 866 n. (*See* FIXTURES.)
what are, I. 851, *et seq.*
executor's right to sever, I. 853, *et seq.*
separate property of wife, I. 869, *et seq.* (*See* HUSBAND AND WIFE.)
donationes mortis causâ, I. 887, *et seq.* (*See* DONATIO MORTIS CAUSÂ.)

QUANTITY OF ESTATE IN ACTION, II. 1, *et seq.*
choses in action II. 1, 20 n. (*See* ACTION.)
which the deceased might have put in suit, II. 2, *et seq.*
as respects husband and wife, II. 54, *et seq.* (*See* HUSBAND AND WIFE.)
which accrued after death of testator, II. 77, *et seq.*
contingent and executory interests, II. 88—90.
the executor of the object of a power cannot be an appointee, II. 89, 90.
continuation of suits by executor, etc., II. 91, *et seq.* (*See* REVIVOR, CERTIORARI.)
in case of a corporation sole, II. 47.
executor of bankrupt, II. 49.
annuities, II. 35. (*See* also II. 1 n)
arrears of, apportionable, II. 44, *et seq.*
canal shares, etc., II. 36.
shares under Companies Acts, II. 37.
stock in public funds, II. 37.
dividends apportionable, II. 43, *et seq.*
interest, II. 43.
may be apportioned, II. 43, *et seq.*
servant, II. 38.
apprentice, II. 38—40.
parish apprentice, II. 39,
copyright, II. 40.

ESTATE.—*Continued.*
patent, II. 40.
caroome, II. 40.
rent, II. 40, *et seq.* (*See* RENT.)
copyhold fines, II. 46.
money collected on briefs, II. 46.
damages to estate of deceased tenant for life, II. 47.
wrecked goods claimed by executors within a year and a day, II. 49.
of several executors etc., II. 104—105.
each has the whole, II. 104.
release by one of part of the debt releases all, II. 104.
if one contracts the others cannot join in suing, II. 104 n.
they cannot sue on a promise made by deceased jointly with one of them, II. 105.
survivorship among, II. 146, 148, *et seq.*, 592 n.
of executor of executor, II. 106.
with respect to *choses in action*, II. 106.
of administrator de bonis non, II. 106, *et seq.*
privity of estate between him and original executor, II. 107.
property converted by original executor, etc., II. 107, 108.
his title to *choses in action*, II. 108, 109.
enforcement of judgments obtained by original executor by, II. 109, 110.
of feme covert executrix, II. 110. (*See* HUSBAND AND WIFE.)
is the same as that of *feme sole*, II. 110, 111
estate vested in her after a protection order, II, 111.

ESTATE DUTY,
chargeable on estates exceeding 10,000*l.*, I. 734.
to be in addition to probate duty, I. 735.
person delivering affidavit of account for probate to deliver a statement of estate and effects, I. 734.
person delivering account of voluntary dispositions, etc., *inter vivos*, under 44 Vict. c. 12, s. 8, to do the like, I. 737.
provisions in cases where further affidavit delivered, I. 735.
return of, where overpaid, I. 736.
duration of the duty, I. 736.
penalty for default, I. 736.
on successions, where estate over 10,000*l.*, III. 65.
statement of value to be delivered with Succession Duty Account, III. 65.
amount of duty, III. 65.
leaseholds not included, III. 65.
how assessed on realty, III. 66.
how charged, III. 66.
duration of duty, III. 67.
penalty in case of default, III. 67.

ESTATE FOR LIFE. (*See* TENANT FOR LIFE.)
gift to A. for life, remainder over, does not lapse by death of A. in testator's lifetime, II. 509, 533—543. (*See* II. 510 n.)
gift to A. for life and after his death to his issue, issue take as purchasers, II. 386, 387, *ibid.*, n.

ESTATE *PUR AUTER VIE*,
goes to executor if undisposed of, I. 814, 815.
effect of stat. 1 Vict. c. 26, ss. 3, 6, I. 814.
how distributable in his hands, III. 118—120.
will pass by words "lands and hereditaments," III. 118 n.

ESTATE TAIL. (*See* SUCCESSION DUTY.)
in personalty, vests absolutely in the legatee, II. 377, *ibid.*, n. (*See* I. 811, 812, *et seq.*, II. 510 n.)
heir-looms, settled or devised as, I. 848.

ESTOPPEL,
party to suit in Probate Division estopped from denying fraud found by jury in Chancery Division, I. 659 n.

ESTOPPEL.—*Continued.*
none of administrator who has sued under Lord Campbell's Act in another action in respect of the same matter, II. 11.

ESTRAY,
upon manor of wife, when it goes to husband's executor, II. 59. (*See* II. 54: and HUSBAND AND WIFE.)

"ETCETERA,"
what the word will pass in a will, II. 466, *ibid.*, n.

EVIDENCE. (*See* also, WITNESS, PROBATE, *manner of obtaining.*)
in testamentary causes, I. 403, *et seq.* (*See* PROBATE.)
rules of evidence in common law courts to be observed in Court of Probate, I. 403.
competency of witnesses and parties, I. 403, 404.
of executor, I. 403.
examination of attesting witnesses, I. 406. (*See* I. 144, 145.)
witnesses may be summoned and examined *vivâ voce*, I. 404.
how evidence is to be taken in contentious matter, I. 405.
court may issue commissions or give orders for examination of witnesses, I. 406.
mode of proving handwriting, I. 410, 411.
rule that on proof of signing will by testator, instructions and knowledge of contents presumed, I. 411, 412, *ibid.*, n.
effect of full attestation clause, I. 144 n., 147 n., 411 n.
parol evidence to prove lost will, I. 209, 456 n., 460, 462 n.
onus as to shewing cancellation, I. 207 n., 210.
where signature destroyed, I. 184 n.
revocation by will, I. 214 n., 217 n.
by lost will, I. 207.
to explain intention, I. 416, II. 607 n.
to explain ambiguity on the *factum*, I. 417, *et seq.*
onus on proponent, I. 413 n.
to show whether a codicil is cumulative or substituted, I. 219, II. 602, *et seq.*, 607 n.
of intention to revoke, I. 189 n., 194, 206, 220.
of *animus testandi*, I. 151 n., 153, 220.
to show testamentary character of instrument, I. 4 n., 9 n.
to show knowledge of blind testator, I. 19 n.
to show testamentary capacity, I. 21 n., 25 n., 415 n., 424 n.
imbecility, delusions, etc., I. 22 n., 26 n., 40 n., 42 n.
intoxication, I. 50 n., 51 n.
undue influence, I. 59 n., 64 n., 65 n.
interested draftsman, I. 59 n., 68 n., 163 n., 167 n.
fraud, I. 54 n.
of lunacy, I. 20, *et seq.* (*See* LUNATIC.)
as to alterations in a will, I. 160 n., 162 n., 186, 187. (*See* ALTERATIONS.)
in case of mutilated will, I. 186, 207. (*See* WILL, *Revocation of.*)
to ascertain who the executor is, I. 287 n.
onus probandi, where draftsman of will is a beneficiary, I. 59 n., 68 n., 164, 412 n. (*See* BENEFICIARY.)
as to domicil of deceased, II. 920 n.
verdict in ejectment not admitted, I. 423.
declarations of testator when admissible in, I. 424, III. 557 n.
declarations of testator, to show undue influence, I. 64 n., 424 n.
to show capacity, I. 425 n., 427 n.
to show forgery, I. 425 n.
to explain mutilation, I. 187 n., 190 n., 460 n.
to show revocation, I. 190 n., 425 n.
to explain omission of child, I. 243 n., 244 n.
to explain the will, I. 416 n.
to prove lost will, I. 457 n., 458 n.
made to attorney, I. 405 n.
scrivener, I. 427 n.
effect of probate in, I. 654, *et seq.*

EVIDENCE.—*Continued.*
of mixed will of land and goods, how made evidence to prove the devise of the land, I. 377, 468, 469, 666—668. (*See* PROBATE, *Effect of.*)
cases where probate is not evidence, I. 664.
probate as evidence of devise, I. 351 n., 354 n., 355 n., 673 n.
of validity of will, I. 468 n.
of execution of will, I. 672 n.
record of will as evidence, I. 466 n., 467 n.
foreign probate as evidence, I. 434 n.
unprobated will as evidence, I. 354 n., 366 n.
will as evidence of title, I. 468 n.
letters as evidence of jurisdiction, I. 483 n.
mode of getting a will of land out of the registry, in order to produce it in evidence, I. 377, 469, 470.
admissibility of, in construing a will. (*See* I. 416 n., II. 425 n., 429 n.)
general doctrine, II. 607.
to rectify mistake of description, II. 426—431, 490—494. (*See* I. 260—263 n.)
to ascertain the thing bequeathed, I. 260—263 n, II. 494, *ibid.* n. (*See* II. 429 n.)
to ascertain who the legatee is, II. 365 n., 373 n., 426—431, 501 n.
to ascertain whether payment may be made to trustee for infant, II. 719.
as to whether a bequest of stock is specific, II. 448.
as to cumulative legacies, II. 606—608.
as to the satisfaction of a debt or portion by legacy, II. 615, *et seq.*, 884 n.
as to release of debt by appointment of executor, II. 629 n.
as to the ademption of a legacy given as portion, II. 647, 652 n.
by testator not actually a parent, II. 652 n.
as to the executor's right to the residue, II. 837.
as to whether legacy to executor is in his character as such, II. 595.
that *plaintiff* is executor or administrator, III. 464.
where necessary, III. 464.
what is sufficient, III. 464, *et seq.*
probate, III. 464.
proof of lost probate, III. 465.
proof of revocation of probate, III. 465.
letters of administration, III. 466.
how far probate, etc., conclusive, I. 654, *et seq.*, III. 466.
what evidence defendant may allege to rebut effect of probate, III. 467.
that *defendant* is executor or administrator, I. 654, *et seq.*, III. 466.
on an issue of *ne unques executor*, the *onus* is on plaintiff, III. 524.
proof of acts such as to make defendant executor *de son tort*, sufficient, III. 524.
case of two executors, one of whom does not administer or prove, III. 524.
notice to produce probate or letters, III. 524.
they need not be shown in defendant's possession, III. 524.
proof of identity, III. 524.
for plaintiff, on issue joined on *plene administravit*, III. 538, *et seq.*, 602—605. (*See* PLENE ADMINISTRAVIT.)
for the executor, that the assets are exhausted, III. 541, *et seq.*
verdict against testator is evidence against executor, III. 556.
whether admissions made by an executor, etc., before appointment are receivable against him as executor, II. 28 n., III. 467, 582 n.
admissions by co-executor, III. 467, 582 n.
secondary, of contents of a will, III. 557.
admissibility of declarations of deceased as evidence against executor, III. 556 n.
entries made by deceased executor against his interest, III. 556 n.
as to uncorroborated claims against estate of deceased, I. 877 n., III. 277, 278, 611.
as to survivorship of two persons dying by a common death, I. 494, 555, II. 59, 496, 497 n.
admissibility of evidence in suits by or against personal representative, III. 578 n.
competency of witnesses in such suits, III. 578 n.
inventory as evidence, II. 183 n.
settlement of account as evidence against surety, I. 637 n.

EVIDENCE.—*Continued.*
evidence of presentment of claim, II. 244 n.
of allowance, II. 251 n.
of performance of condition of legacy, II. 566 n.
of negligence in administration, III. 355 n.
title in trover, II. 86 n.
trespass, II. 86 n.
declarations of legatee,
as to undue influence, I. 67 n., 428 n.
as to validity of will, I. 425 n.

EXCOMMUNICATION,
does not produce incapacity to make a will, I. 92.
nor to be executor, I. 276 n.

EXECUTION. (*See* JUDGMENT.)
the goods of a testator cannot be taken in execution for debt of executor, I. 767.
cases where this rule is varied, I. 767 n., 768.
how executor must obtain, II. 95, *et seq.*, III. 241, 468. (*See* REVIVOR.)
how, must be obtained where administration revoked, I. 719. (*See* REVIVOR.)
how obtained by administrator *de bonis non*, II. 109, 110.
on judgment obtained by testator, III. 468. (*See* also II. 96, III. 550.)
a writ of execution issued in testator's lifetime may be executed after his death, III. 469 n. (*See* also II. 96.)
where testator co-defendant on joint cause of action, whether he dies before or after judgment, execution cannot be had against executor, III. 241, 242.
secus against heir, III. 242 n.
where he dies between verdict and judgment, III. 242.
where testator sole defendant dies before judgment, executor must be made a party under Ord. XVII., r. 1, if cause of action continues, III. 241. (*See* II. 91, *et seq.*)
if death between verdict and judgment, whether cause of action survives or not, Ord. XVII. applies, III. 242. (*See* II. 91, *et seq.*)
where testator sole defendant dies after judgment, execution must be obtained under Ord. XLII., r. 23, III. 243. (*See* III. 468.)
Ord. XLII. r. 23, does not apply to equitable execution, III. 241 n.
when it may be had of the goods of the testator in the hands of his executor without further proceedings, III. 551.
when revival necessary under old law, III. 551.
procedure under Judicature Act, III. 552.
execution on judgment of assets *in futuro*, III. 552. (*See* III. 546, *et seq.*)
several executors praying different writs of, III. 523 n.
stay of, when it may be obtained, III. 469.
de bonis testatoris, III.584 n.
de bonis propiis, III. 586 n.
de terris, III. 585 n.

EXECUTION OF WILLS, I. 94, *et seq.* (*See* WILL, *Form and Manner of Making.*)

EXECUTOR,
in strictness essential to a testament, I. 6.
if appointed by word of mouth, the will is nuncupative, I. 168 n.
regularly, may not be instituted, but only substituted, in a codicil, I. 278 n.
acceptation of the word, I. 268.
distinction between, and trustee, III. 321, 322, *ibid.*, n.
considered in equity as a trustee, III. 588.
nomination of, is sufficient to make a will, I. 89, 245, 268.
who entitled under a bequest to, II. 408, *et seq.*
whether he takes a bequest beneficially, II. 522, *et seq.*, III. 121.
bequest to "A. and his executors" gives him the absolute interest, II. 409.

WHO IS CAPABLE OF BEING, I. 269, *et seq.*, 538 n.
the king, I. 269.
corporations, I. 270.
a partnership firm, I. 270.
aliens, I. 270.
infants, I 271.

EXECUTOR.—*Continued.*
sole executor infant cannot act till twenty-one, I. 272.
whether if infant executrix take husband at full age he shall have the execution, I. 272.
feme covert, I. 273, *et seq.* (*See* HUSBAND AND WIFE.)
persons attaint and outlaws, I. 273.
persons of bad character, I. 274 n.
bankrupts and persons in mean or insolvent circumstances, I. 274, 275, 452.
control of, by appointing receivers or requiring security, I. 275, 452.
villein, I. 273 n.
persons disqualified under civil law, I. 274.
under common law anciently. I. 276 n
non compotes, I. 276.

APPOINTMENT OF,
can only be by testament, I. 268 n., 278, 282 n.
by what words, I. 278, *et seq.*
bad for uncertainty, I. 287.
executor according to the tenor, I. 278.
by words pointing at the office or rights of an executor, I. 278—281.
by necessary implication, I. 282.
distinction between executor and overseer or coadjutor I. 283. (*See* too, I. 301 n.)
may be admitted to probate jointly with an express executor, I. 284.
general by implication, after an express limited appointment, I. 284.
appointee of legatees, I. 284.
several executors, I. 285.
co-executors, in law one person, I. 285 n.
may have distinct functions, I. 284 n. (*See* CO-EXECUTORS.)
with power to survivor to appoint a fresh one, I. 286.
appointment after testator's death through designated agent, I. 286 n.
or by the court, in a designated emergency, I. 286 n.
successive executors, I. 290 n., 292 n., 296 n.
as administrator *pendente lite*, I. 593 n.
or *pro tempore*, I. 611 n.
as trustee, III. 377 n.
substituted executors, I. 285.
appointment of executors in a will revoked by codicil naming a "sole executor," I. 287.
how qualified or limited, I. 288, 289 n., 290 n., *et seq.* (*See, infra*, LIMITED EXECUTOR.)
in what cases it may be transmitted, I. 286 n., 293, *et seq.*
revocation of appointment of, being also trustees, no revocation their trusteeship, III. 322 n.

BOND of, when required, I. 623 n.—625 n.
by co-executors, I. 629 n., 636 n.
amount of, I. 630 n.—632 n.
sureties on, I. 632 n.
counter security, I. 633 n.
further security, I. 634 n.
covers what, I. 637 n., 638 n., 639 n.
as trustee, II. 717 n., III. 378 n.

ABSENCE OF, I. 595, *et seq.* (*See* ADMINISTRATION DURANTE ABSENTIÂ.)

RENUNCIATION BY, I. 323, *et seq.* (*See* RENUNCIATION.)

PROBATE OF WILL BY. (*See* PROBATE, COURT OF PROBATE.)
he cannot rely on his title in any court, without probate, I. 347.
but he derives his title from the will itself, I. 288 n., 354.
from the probate in some states, I. 362 n.
from the will and the state, I, 278 n.
what he may do before probate, I. 362, *et seq.* (*See* PROBATE.)
citation to prove, I. 372.

EXECUTOR.—*Continued.*
at the instance of any party interested, I. 372.
where the will is destroyed or concealed by executor, I. 374.
penalty where executor administers, and does not prove within six months, I. 379—381.
probate not to issue until after seven days from death of testator, I. 381.
when applied for after the expiration of three years from the death of the testator, I. 381.
probate cannot be obtained during a contest respecting the validity of codicil to a will, I. 464.
after obtaining probate cannot call validity of will in question, I. 691.
unless the will was procured by fraud, I. 54 n.
manner of obtaining probate, I. 381, *et seq.*

ESTATE OF EXECUTOR, I. 759. (*See* also, II. 408, *et seq.* *See* ESTATE, ASSETS.)
his rights as to the residue, II. 421 n., 820, *et seq.* (*See* RESIDUE.)
of the effect of appointing a debtor executor, II. 624, *et seq.*
by common law, II. 625.
in equity, II. 628, 629 n.
rule in equity will now prevail, II. 626.
effect of statute of Limitations on debt of executor, III. 570 n.
of the effect of appointing a creditor executor, II. 629, *et seq.*
by one of several debtors, II. 630.
creditor sole executor, II. 629.
one of several executors, II. 630.
presentment of executor's claim, II. 240 n., 253 n., 268 n.
proof of executor's claim, II. 247 n., 267 n.

POWER OF, II. 115, *et seq.*
before probate, I. 362, *et seq.* (*See* PROBATE.)
to bring actions, II. 115. (*See* ACTIONS, REMEDIES.)
to sue for death of testator, II. 28 n.
to enter the house of heir, II. 116.
to take deeds, etc., out of heir's chest, II. 116.
to obtain possession of deceased's papers, II. 115 n.
to distrain, II. 116, *et seq.* (*See* DISTRESS.)
stat. 32 Hen. VIII. c. 37...II. 116.
executors may have action and distrain for rent due in testator's lifetime, II. 116, 117.
construction of the statute, II. 117—119.
stat. 3 & 4 Wm. IV. c. 42, II. 119.
to alien the assets, II. 120, *et seq.*, 132 n.
he has an absolute power over the personal estate, II. 120.
the assets cannot be followed into the hands of the alienee, II. 120.
even specific legacies, II. 120.
he may mortgage the assets, II. 121, 138 n.
a purchaser from him is not bound to see to the application of the purchase money, II. 122.
exception when there is collusion between the executor and purchaser, II. 122, 123.
whether a sale in satisfaction of executor's private debt is valid, II. 122, 124.
where there is collusion, legatees as well as creditors may follow the assets, II. 124.
he cannot purchase the assets from himself, II. 125, 138 n., 139 n. III. 401. (*See* III. 105.)
but executor of a deceased partner may sell his share to surviving partners, II. 125.
he cannot bequeath the assets, I. 770.
to assign leases and make underleases, II. 125—126.
what underleases by executors are good in equity, II. 125.
when restrained by condition not to assign, II. 126—128.
underlease exceptional mode of dealing with assets putting purchaser on inquiry, II. 126.
cannot give a future option of purchase, II. 126.
his power of disposal over the assets not controlled by merely commencing an administration action, II. 128.

EXECUTOR.—*Continued.*
to endorse a bill of exchange, II. 129, 132 n.
to prove against his own estate, II. 247 n., 267 n., III. 607, 607 n.
he cannot exercise a power of sale by attorney, II. 130.
as to powers of sale see also I. 797 n., *et seq.*
of executor of assurer to re-assure, II. 130.
of executor of assured to procure indorsement of policy, II. 130.
of election by executor, II. 130.
of compounding or compromising debts and claims, II. 131, III. 324.
of submitting claims, etc., to arbitration, II. 130, 252 n., III. 324.
difference between executor and adminstrator in this respect, III. 324.
law as to administrators, III. 325, *et seq.*
power to transfer stock standing in name of lunatic executor, III. 598.
powers in another state, I. 363 n. (*See* FOREIGN EXECUTORS.)
power to employ counsel, II. 195 n.

DUTIES OF,
as to the funeral, I. 363 n., II. 165, III. 313 n., *et seq.* (*See* FUNERAL.)
as to proving the will, etc., I. 377, II. 173 n. (*See* PROBATE—ADMINISTRATION.)
as to the making an inventory, II. 173—180. (*See* INVENTORY.)
as to collecting the effects, II. 185.
consequence of not removing the personal property from the land, II. 185.
as to the payment of debts, II. 186, *et seq.* (*See* DEBTS.)
order of payment prescribed by law, II. 187—220.
payment of inferior debts without notice of superior, II. 229—231.
suffering judgment for inferior debt, without notice of superior, II. 229.
registration of judgment, II. 202, 203, 230.
public notice to creditors, II. 231 n.
presentment of claims to executor, II. 235 n.
allowance by executor, II. 247 n.
rejection by executor, II. 248 n.
waiver of bar for non-claim, II. 246 n.
of the executor's power of preference among creditors of equal degree, I. 136 n., II. 230—257.
controlling his preference by proceedings at law or in equity, II. 256, 257, III. 491.
may prefer creditor after another has commenced action, II. 256, 257, III. 536 n.
so after decree for account, III. 492 n.
unless creditor suing on behalf of himself and other creditors, II. 257.
court will take into account preferential payments when it makes payments, II. 257.
of the executor's right of retainer, II. 258—267, 268 n. (*See* RETAINER.)
of the executor's subrogation for advances, II. 226 n.
as to the payment of legacies, II. 269, *et seq.*, 690, *et seq.* (*See* LEGACY.)
all debts must be satisfied before any legacies, II. 653, *et seq.*
voluntary debt, II. 217, 654.
contingent debts, II. 654—657.
when legatee must give security against, II. 654.
debts of which executor had no notice, II. 656, *et seq.* III. 470.
executors assent to legacy, II. 677, *et seq.* (*See* ASSENT.)
at what time legacies are to be paid, II. 690, *et seq.* (*See* PAYMENT OF LEGACIES.)
to whom legacies are to be paid, II. 716, *et seq.* (*See* PAYMENT OF LEGACIES.)
payment to self as trustee, etc., III. 378 n.
interest upon legacies, II. 741, *et seq.*
in what currency legacies are to be paid, II. 758, *et seq.*
delivery of specific legacies, II. 762—766.
as to the payment of the residue, II. 801, *et seq.* (*See* RESIDUE.)
as to carrying on testator's trade, III. 495. (*See* TRADE.)
where valuable must do so for sale as going concern, III. 495.
as to distribution, II. 840, *et seq.* (*See* DISTRIBUTION.)

EXECUTOR.—*Continued.*
as to keeping clear accounts, III. 600.
what are assets in his hands, III. 101, *et seq.* (*See* ASSETS.)
LIABILITY OF. (*See* ACCOUNTS — ACTIONS—ALLOWANCES — DEVASTAVIT—REMEDY—TRADE.
in respect of the acts of the deceased, III. 222—287.
in matters of contract, III. 222—227.
to do a collateral act, though uncertain, III. 223.
though not named, III. 224.
accruing after testator's death, III. 224, 283 n.
where contract was personal to testator, III. 225—227.
in matters of tort, III. 228—235, 287 n.
rule *actio personalis moritur cum persond*, III. 228.
examples of the rule, III. 228 *et seq.*
modification of the rule by stat. 3 & 4 Wm. IV. c. 42, III. 234.
actions may be brought against executors for injuries to property real or personal, by testator, if committed six months before death, III. 234.
to be commenced within six months after executors have taken office, III. 234.
the executor may be in many cases made liable by suing him in form *ex contractu*, III. 229—233. (*See* III. 228 n.)
of executor of rector, etc., for dilapidations, III. 235—238.
for breaches of trust, III. 238, 283 n.
on debts of record, III. 240.
on statutes and recognizances, III. 240.
may be sued for debts immediately after testator's death, III. 589.
on joint contracts, III. 240, 290 n.
in case of partners, III. 243—249, 285 n.
provisions of Partnership Act, 1890. . . III. 244, 248 n., 248, 249.
discharge of executor of partner from liabilites, III. 247.
right of surviving co-contractor to enforce contribution, III. 248. (*See* III. 289 n.)
of deceased shareholders in public companies, II. 654, III. 249—252.
on covenants concerning the realty, III. 253, 254, 283 n., 284 n.
on contracts between landlord and tenant, II. 655 n., III. 254, *et seq.*
personal responsibility of executor for rent in his own time, I. 818 n., III. 256, *et seq.*, 258 n.
for repairs, III. 262, 263.
for continuing to occupy premises held by testator from year to year, III. 264.
from occupation of co-executor when lands are leased for years by demise not under seal, III. 264. (*See* II. 145.)
for party walls, III. 264.
on a covenant by testator to take a renewed lease, III. 264.
to complete the work of testator, III. 311.
of executor of vendee to complete purchase, III. 265, 266.
to exonerate specific legacies, III. 267.
of leaseholds, III. 268.
of shares in public companies, III. 269. (*See* III. 249—252.)
as to apprentices, III. 270.
as to poor rate and church rates, III. 271.
as to debts of husband and wife, III. 272—275, 286 n.
as to action for work and labor with a view to a legacy, III. 276, 283 n.
executor of tenant for life who neglects to renew a lease, III. 276.
as to admission to copyholds, III. 276.
as to judge's executor certifying bill of exceptions, III. 277.
as to executor of justice of the peace or coroner certifying record, III. 277.
as to completing gift of testator, III. 277.
of testator delivering a deed as an escrow, III. 278.
on a note made payable with interest at a certain period after death of testator, III. 278.
on continuing guarantee of testator, III. 279.

EXECUTOR.—*Continued.*
in respect of his own contracts, III. 288, *et seq.*
as executor,
upon contracts made as executor, III. 288—292, 312 n., *et seq.*
promise to pay money awarded after testator's death, III. 289.
money not due till testator's death, III. 289.
on an account stated as executor, III. 289.
money paid to his use as executor, III. 289.
not money lent to him as executor, III. 290.
nor money had and received by him as executor, III. 291.
in an action for use and occupation after death of testator, III. 292.
for goods sold and delivered, and for work done and materials used and provided, III. 292.
to pay interest, III. 292.
third person cannot by contract with executor acquire right to prove against estate, III. 290 n.
personally, III. 292, *et seq.*
is a gratuitous bailee, III. 333. (*See* DEVASTAVIT.)
there must be a good consideration, and the promise must be in writing, III. 292, 293, 314 n.
what is a sufficient consideration, III. 293—297, 315 n.
what is a sufficient writing, III. 298.
on promise made before probate and grant of letters, III. 293. (*See* n.)
on a submission to arbitration, III. 299—301.
for acts done under his power of attorney, III. 301.
with respect to the expenses of the funeral, III. 301—304, 313 n.
continuing testator's trade, III. 305—312, 315 n., 317 n.
for maintenance of family, III. 317 n.
for management of lands, III. 320 n.
for contract of predecessor, II. 172 n.
on a *devastavit*, III. 321, *et seq.* (*See* DEVASTAVIT, ACCOUNTS.)
accounts of, and allowances to, III. 398, *et seq.* (*See* ACCOUNTS, ALLOWANCES.)
in what cases charged with interest, III. 402—410. (*See* INTEREST.)
under usual administration decree, III. 601.
remedies against. (*See* REMEDIES.)
at law, III. 514—587.
in equity, III. 588—661.
where the will is destroyed or concealed by him, I. 373.
in the Probate Court, III. 662—667.
in the County Court, III. 668—672.
when property is given to, as trustee, taking probate is an acceptance of the trust, II. 600, III. 321.
as husband of executrix, II. 164 n.
(*See* HUSBAND AND WIFE.)

LEGACY TO, II. 408, *et seq.*
as such, whether he can in any case take beneficially, II. 417, *et seq.* (*See* III. 121.)
when he can take, without accepting the office, II. 594, *et seq.* (*See* CONDITIONAL LEGACIES.)
assent to by himself necessary, II. 685, *et seq.* (*See* ASSENT.)

SEVERAL EXECUTORS, I. 285, *et seq.*
in several degrees, I. 285.
substituted executors. I. 285.
if an instituted executor accepts office, the substitutes are all excluded, I. 285.
exceptions, I. 285.
are considered as an individual person, I. 285, II. 142.
taking a residue take as joint tenants, II. 820.
title of, proved by probate granted to one, III. 465. (*See* also I. 463.)
must all join in bringing actions, II. 150, III. 473 n. (*See* PARTIES.)
infants, II. 150.

EXECUTOR.—*Continued.*
executor who has renounced, or not administered, II. 149.
order for adding executor as party who has not joined, II. 149 n., III. 485.
no more need be sued than have administered, III. 519, 590.
for distinct parts of the property, I. 289, 290, II. 142 n.
quoad creditors, they are all one executor, I. 291.
executor of one of,
no interest transmissible, except to executor of survivor, I. 296, 336, 567, 568.
renunciation by, I. 332.
consequences of, I. 333, II. 146.
difference formerly as to renunciation by all and by some, I. 297, 333.
rights of executor renouncing probate to cease as if he had not been named in the will, I. 334, 568.
an executor renouncing may sue his co-executor, I. 336.
so if neither proves nor acts, II. 151.
probate granted to one enures for the benefit of all, I. 462.
double probate, I. 462.
where there are several executors with distinct powers, or for distinct portions of time, I. 463.
estate of one of several executors, II. 104, *et seq.* (*See* ESTATE.)
they cannot sue on a promise made jointly with one of them, II. 105.
they cannot *all* sue on a contract made by *one*, II. 81 n.
discounting of bill of exchange by one out of testator's money will not enable him to join with others in suing as indorsee for value, I. 774.
one executor should not lend the assets to another, III. 336.
notice to one is notice to all, III. 379.
entry by one shall not charge the other, II. 144, III. 264.
how far the act of one can impose a charge on his companion, II. 144.
liability of one for *devastavit* of another, III. 379, *et seq.* (*See* DEVASTAVIT.)
where he stands by and sees breach of trust, III. 384.
22 & 23 Vict. c. 35, indemnity clause, III. 385.
retainer for devastavit by co-executor, II. 619 n.
one of several executors cannot bind the others by his contract, II. 145.
Bank may require all who have proved to join in transfer of stock, II. 38, 144.
transfer of railway shares or stock standing in names of two executors cannot be made by one, II. 144 n.
power of one of several executors, II. 142—151.
of the survivor, II. 146.
exercise of power given to several to sell land, II. 146, *et seq.*
when one renounces, II. 146—149.
by surviving executors, II. 146.
by a single survivor, II. 149, 150.
rule introduced by Conveyancing Act. II. 150.
when one executor may sue the other, I. 336, II. 151, 630.
in equity, III. 484.
injunction by executor against co-executor before probate, III. 664.
demise by executors to their co-executor, II. 151.
an executor may prove under co-executor's bankruptcy, III. 607 n.
one of several executors may accept a surrender of a term, II. 145 n.
assent by one of several to his own legacy sufficient, II. 690.
pleas by, III. 522, 523. (*See* PLEAS.)
judgment against, when only one is found to have assets, III. 546. (*See* JUDGMENT.)

EXECUTOR OF EXECUTOR,
whether he may refuse to administer the first testator's effects though he he accepts the office as to his immediate testator, I. 326, 332, 575 n., 714 n.
where there is a sole executor, his executor represents the first testator, I. 293.
not unless the first executor proves the will, I. 295.
but will must be proved in this country, I. 568.
if there are several executors, no interest is transmissible, except to the executor of the survivor, I. 296.

EXECUTOR.—*Continued.*
under the old law not even where one of several proved, and the rest renounced, I. 297, 333.
but now rights of an executor renouncing probate cease, as if he had not been named in the will, I. 297. 334.
authority of administrator *durante minoritate* of executor of executor, I. 569.
liability of, I. 586.
administrator *durante absentia* may be appointed in absence of, I. 596 n.
his estate, II. 106. (*See* ESTATE.)
executor of *feme covert* executrix, I. 296, 494, II. 110.
if executor dies before probate, his executor does not represent the first testator, I. 371.
quære whether can retain when original executor creditor of testator, I. 365 n.
no new probate necessary for, I. 464.
his power, II. 156—158.
when he can execute a power, II. 156—158, 592 n.
a personal trust, II. 156, 157 n., 592 n.
a power annexed to an interest, II. 157.
what are assets in hands of, I. 767, 768.
remedies against, III. 229, 554, 560 n.
for a *devastavit* of first executor, II. 111 n., III. 229, 554.
debt on a judgment against the first executor suggesting a *devastavit*, III. 550, 554.
cannot after probate call in question validity of will, I. 691.

EXECUTOR OF ADMINISTRATOR,
does not represent the intestate, I. 569

ADMINISTRATOR OF EXECUTOR,
does not represent first testator, I. 293, 294.
cannot sue for double value of lands held over, though tenant attorned to him, I. 294 n.
administrator *durante minoritate* of executor of executor represents first testator, I. 295 n.

LIMITED EXECUTOR, I. 288, *et seq.*, 601, *et seq.*
in point of time, I. 288.
as to when he shall begin his office, I. 288.
as to when he shall cease, I. 289.
in point of place, I. 289, 610, Cf. III. 379, 382.
in various countries, I. 290.
in point of subject-matter, I. 290.
as to creditors, distinct executors are all as one executor, I. 291.
conditional executor, I. 291.
acts done by executor before condition broken, good, I. 291 n.

EXECUTOR DE SON TORT,
definition of, I. 298.
may be of a term of years, I. 301.
what acts constitute, I. 299—306. (*See* also I. 327, III. 514.)
is not a question for a jury, I. 310.
cannot be purged by a subsequent grant of administration, I. 315 n.
what acts do not constitute, I. 306—310.
whether there may be a lawful executor or administrator, and an executor *de son tort*, at the same time, I. 306, 682 n.
liability of, I. 310, *et seq.*
an executor *de son tort* may be sued as such, though, before writ brought, administration be legally granted to another, I. 305 n.
can be sued jointly with lawful executor or severally, I. 312.
but cannot be joined in suit against administrator, I. 312.
in an action by a creditor, I. 312.
by a creditor administrator for his own debt, II. 630.
he shall be named executor generally, I. 311.
consequence of his pleading *ne unques executor*, I. 312.
not liable beyond the assets come to his hands, I. 312.
plea of *plene administravit* by, I. 313.

EXECUTOR DE SON TORT.—Continued.
may be pleaded with *ne unques executor*, I. 314.
he may show the payment of debts under, I. 314, 315, II. 223, 224.
of equal or superior degree, I. 315.
he may show the delivery of the assets to the rightful executor, I. 315, 720.
secus, after action brought, I. 314.
payments to an administrator after suit in equity not allowed, I. 314.
accounting with rightful executor not sufficient in equity, *sed quære*, I. 314 n.
he may show payment of debt of *superior* degree *after* action brought, I. 313, II. 224.
retainer by, for his own debt,
cannot be pleaded or given in evidence, I. 315.
though of superior degree, I. 315.
though the rightful executor or administrator assent to it, I. 315.
if he were sued as executor generally, and pleads a retainer, the plaintiff may reply that he is executor *de son tort*, I. 315.
if he gives the retainer in evidence, the plaintiff may show who is the rightful executor, I. 315.
may be legalized by administration obtained *pendente lite*, I. 315.
he may rejoin that fact *puis darrein continuance*, I. 316.
in an action by the rightful executor, I. 316.
he may give in evidence, *in migitation of damages*, payments made in a course of administration, I. 316 n.
but he cannot plead them in bar, I. 318.
he shall not be allowed them, where the assets are not sufficient for debts, I. 319.
whether the executor *de son tort* of an executor *de son tort* is liable for a *devastavit* by the first, III. 229 n.
effect of his acts on assets aliened by him, I. 320.
all his lawful acts are good, I. 320.
qualifications of this rule, I. 321.
how far bound by his own acts having subsequently obtained letters of administration, I. 322. 487. (*See*, III. 302.)
he cannot bring any action in right of the deceased, II. 115.
but being in possession of goods of deceased may maintain an action in respect of them against a mere wrongdoer, II. 115 n.
his presence in a court of equity will not dispense with that of a regular representative, III. 514 n., 620.
there cannot be an administrator *de son tort*, I. 312 n.
agent to, cannot discharge himself by showing that he has accounted to his principal, I. 314.
of *executor de son tort*,
liability of, III. 229 n.

EXECUTOR ACCORDING TO THE TENOR,
how appointed, I. 278—281.

"EXECUTORSHIP EXPENSES,"
what they mean, II. 187.

EXECUTORY BEQUEST, II. 546, 549, 553. (*See* LAPSED LEGACIES.)

EXECUTORY INTEREST,
passes to executor, I. 828, II. 88, *et seq.*

EXEMPTIONS,
from probate duty, I. 737.
from legacy or succession duty, I. 731, III. 2 n.
from bond. (*See* ADMINISTRATION, BOND.)
of homestead, II. 870 n.
statutory, II. 870 n.
to family, II. 871 n.

EXONERATION. (*See* ASSETS—MARSHALLING.)
of the real estate by the personal, III. 147, *et seq.*, 185 n., *et seq.*
heir or devisee who has been forced to pay a bond, shall be reimbursed out of the personal assets, III. 148.
so formerly of a mortgage, III. 148, 185 n.
where land is devised subject to incumbrances, III. 148 n., 190 n., 191 n.
secus, if the payment of the mortgage debt is a condition imposed on the devisee, III. 149 n.
not so as to disappoint any person having a prior claim to be satisfied, III. 149.
it can only take place where the debt is the *proper debt* of the deceased, III. 150—154.
17 & 18 Vict. c. 113 (Locke King's Act), after Dec. 31, 1854, heir or devisee of real estate not to claim payment of mortgage out of personal assets, III. 155, *et seq.* (And *see*, in N. Y., 186 n.)
construction of Act, III. 155, 156 n.
30 & 31 Vict. c. 69, amends Locke King's Act, III. 157, 158.
40 & 41 Vict. c. 34 (Locke King's Act Amendment Act), III. 158.
of real estate charged with debts and legacies, III. 159.
of the personal estate by the real, III. 159 *et seq.*, 185 n., *et seq.*
what words in a will shall exempt the personal estate from payment of debts and legacies, III. 160—164.
legacies given out of particular fund, III. 165.
of real and personal estate when a mixed fund is directed to be applied in payment of debts and legacies, III. 165.
of specific legacies, II. 646 n., III. 166, 267—269.
of estate purchased by testator, from purchase money, III. 266. (*See* III. 155 n.)

EXPENSES,
executorship, what they mean, II. 187.
funeral, II. 165, *et seq.* (*See* FUNERAL.)
legal, what they include, II. 187 n.
testamentary, what they mean, II. 187.
of probate and administration, what they include, II. 18, 187, 765.

EXPERTS, TESTIMONY OF,
on question of mental capacity, I. 28 n, 406 n.
of undue influence, I. 66 n.
physicians as, on mental capacity, I. 407 n., 414 n., 428 n.
priests as, on sanity, I. 410 n.
value of evidence of, I. 28 n, 411 n., 414 n.

EXTENSION TO DEBTOR.
authority of executor to grant, III. 361 n.

FAC-SIMILE PROBATE, I. 390, 466, 669, 670, *et seq.*

FAILURE OF ISSUE. (*See* ISSUE.)
what it means, II. 377 n.

FALSE IMPRISONMENT,
action for, does not survive to executor, II. 6, 20 n., 26 n.
nor against him, III. 228.

FALSE RETURN,
survival of action for, II. 27 n.

FAMILY,
who entitled, under description of, in a will, II. 404—406 n.
younger branches of, II. 407.
when they take *per capita* and when *per stirpes*, III. 103 n.
gift to "A. for her and her family," II. 407.
payment of legacy to "A. and his family," II. 717.
Act for compensating the families of persons killed by accident, etc. (9 & 10 Vict. c. 93), II. 9, *et seq.*

"FARMING STOCK,"
whether words will pass growing crops, I. 838 n., II. 471.

FATHER,
his rights to the grant of administration to his son, I. 500.
to the residue of his son's effects, II. 901.
to share with his widow, II. 902.

FEAR. (*See* WILL, *who is capable of making.*)
will obtained by, I. 53.

FELO DE SE. (*See* WILL, *who is capable of making.*)
formerly incapable of making a will of chattels, I. 91.
presentment or inquest of, when removable by *certiorari*, and traversable by executors, II. 96.
administration to the effects of, I. 512.

FELON. (*See* WILL, *who is capable of making.*)
legacy to, how to be paid, II. 740.
formerly incapable of making a will, I. 91.
unless pardoned, I. 91.
he may make a will as executor, I. 91.
may sue as executor, I. 273.
administration granted to, I. 540 n.
administration to effects of, I. 510.
forfeiture of property of abolished by 33 & 34 Vict. c. 23 . . . 60, I. 512.

FEME COVERT. (*See* HUSBAND AND WIFE.)

FIERI FACIAS. (*See* EXECUTION, JUDGMENT.)

FILING AND RECORDING WILL,
statute in Am. States, I. 376 n.
a failure in does not vitiate executor's action, I. 377 n.

FINES,
imposed upon testator, liability of executor for, III. 240.
copyhold, II. 46, III. 276.

FIRE INSURANCE,
to two persons jointly, goes to survivor, I. 794 n.
collected by executor, II. 23 n.
allowance for premiums to representative, II. 196 n., 198 n.

FIRM OF PARTNERS.
may be executors, I. 270. (*See* II. 834.)

FISH,
when they pass to executor, I. 831.

FIXTURES. (*See* HEIRLOOMS.)
general rule as to, I. 851, 866 n.
what is an annexation of a chattel to the freehold, I. 851, *et seq.*
constructive annexation, I, 853.
when executor is entitled to sever, I. 853, *et seq.*
right of executor of tenant in fee against the heir, I. 853.
old rule, I. 853.
relaxations as to trade fixtures, I. 855.
as to fixtures for ornament or convenience. I. 856, 857.
against devisee, I. 859.
right of executor of tenant for life or in tail against remainderman, I. 860-862.
as to trade fixtures, I. 860, 861.
as to ornamental fixtures, I. 862.
cases of fixtures between landlord and tenant, I. 862, *et seq.*
formerly executors of tenant not entitled to fixtures set up for agriculture, I. 863.

FIXTURES.—*Continued.*
provisions of stat. 14 & 15 Vict. c. 25, and of Agricultural Holdings Acts, I. 863.
case of a conservatory, I. 864.
case of a pump, I. 865.
apart from statute must be removed by the tenant or his executor before the tenancy expires, I. 865.
under Agricultural Holdings Act, 1883, within reasonable time I. 865 n.
within a reasonable time, in case of a tenant for life or in tail, I. 866.
will pass by a bequest to a charity, II. 292 n.
"and fixed furniture," bequest of, I. 857 n.
pass by a conveyance of the freehold to which they are annexed by virtue of Conveyancing Act, 1881, I. 859 n.

FOLLOWING ASSETS. (*See* ASSETS.)

FORCE. (*See* WILL, *who is capable of making.*)
will obtained by, I. 52.

FOREIGN ADMINISTRATION,
rights of foreign administrators, I. 507, 508. (*See* also III. 107, *et seq.*, 514.)
liabilities of foreign administrators, I. 507, 508, III. 107, *et seq.*
may sue, when, I. 430 n., II. 30 n., 102 n., III. 476 n., 514 n.
may hold property, I. 429 n.
may receive payment, I. 364 n., 436 n., III. 134 n.
may transfer assets, II. 132 n.
may act as agent for administrator of domicil, III. 134 n.
accounting in foreign jurisdiction, III. 135 n.
in jurisdiction of domicil, I. 431 n., 432 n., III. 137 n.
not for foreign rents collected, II. 53 n.
sale of foreign realty for debts, III. 134 n.
action against domestic administrator, II. 627 n.

FOREIGN ASSETS, I. 505, III. 105, *et seq.* (*See* EXECUTOR, *limited*—ASSETS.)

FOREIGN BONDS,
what passes by request of, II. 476.
semble not within Trustee Relief Acts, III, 498.

FOREIGN CREDITORS,
share with domestic, III. 136 n.

FOREIGN DEBTORS,
may be sued in jurisdiction of domicil, III. 134 n.
give jurisdiction for foreign administration, III. 135 n.

FOREIGN EXECUTORS,
cannot be sued here, III. 136 n., 514, 621. (*See* I. 430 n., 438 n., II. 103 n.)
(*See* FOREIGN ADMINISTRATION.)

FOREIGN JUDGMENT,
ranks as debt by simple contract, II. 201.

FOREIGN LANGUAGE. (*See* WILL, *form and manner of making.*)
immaterial that will in, I. 156.
will in, probate of, I. 466, 668.
construction of, I. 669. (*See* II. 329 n.)

FOREIGN LAW,
construction of technical words of, II. 329 n.
governs executor sued in foreign jurisdiction, I. 432 n., 438 n., 439 n.
as giving action for death, II. 29 n., 30 n.
as governing preference of debts, II. 210 n., 225 n.
capacity of foreign corporation to take by devise, II. 270 n., 271 n., 275 n., 285 n.

FOREIGN PROBATE,
an evidence, I. 434 n.
admission of, I. 434 n.
how attacked, I. 435 n., 439 n.
how far conclusive, I. 679 n.
recording of, as evidence of title, I. 680 n., 681 n.

FOREIGNER. (*See* ALIEN, DOMICIL.)
capacity of, to make a will, I. 12.
may be executor, I. 270.
may be administrator, I. 537, 581.
bond on grant of administration to, I. 619 n.
probate of will of, I. 428, *et seq.*
if the deceased left no personalty in this country, his will need not be proved here, I. 428, 437 n. (*See* II. 179.)
but if a foreign executor has to bring a suit here, there must be administration *ad litem*, I. 429 III. 514.
a will made abroad of property here, must be proved here, I. 352 n., 433.
Scotch confirmation produced in Probate Court and sealed there, has the effect of probate, I. 434, 435.
Irish probates to be of like force as English probates, being resealed, I. 435.
a foreign executor cannot be sued here, III. 514.
rights of representative extend to foreign assets, I. 436.
but not grant of probate, I. 436, *et seq.*
nor grant of administration, I. 505.
when succession duty payable on disposition made by, III, 39 n., 88.
administration to effects, I. 505, *et seq.*
validity and construction of will of,
the court here will be guided by the law of the country of domicil, I. 438, 445, II. 357. (*See* II. 329 n.)
bequest to children of, how construed, II. 369. (*See* II. 914 n., 923, III. 46 n.)
distribution of effects of, II. 914—925.
shall be according to the country of domicil, II. 914.
rules for ascertaining domicil, II. 918, *et seq.*
feme covert foreigner and domiciled abroad may make a will in accordance with law of domicil, I. 90.

FORFEITURE,
of felon's property, abolished by 33 & 34 Vict. c. 23...60, I. 512.

FORGED WILL, I. 658, *et seq.* (*See* FRAUD, PROBATE, *revocation.*)
payment to executor of, good discharge to debtor, I. 656, 715, III. 467.

FORM OF WILL, I. 94, *et seq.* (*See* WILL, *form and manner of making.*)

FORMA PAUPERIS,
executor cannot sue or defend in, III. 486.

FORMER ADJUDICATION,
settlement of administrator d. b. n. as, II. 161 n.
allowance of claim as, II. 251 n.
confirmation of claim as, II. 254 n.

FORMER RECOVERY,
for personal injury bars action for death, II. 32 n.
by devisee as executrix, II. 51 n.
decree in equity vacating fraudulent conveyance by debtor, no bar to action for the debt, III. 360 n.

FRAUD. (*See* WILL, *who is capable of making.*)
will obtained by, I. 53. (And *see* I. 159—167, 454.)
what fraud will annul a will, I. 53.
cannot be set aside in equity, I. 54, 658, *et seq.*
evidence as to, I. 426. (*See* EVIDENCE.)
probate obtained by, I. 658, *et seq.* (*See* PROBATE, *revocation.*)
bequest obtained by, II. 433.

FRAUD.—*Continued.*
when Court of Equity will interfere, I. 657, *et seq.*
will vitiate alienation of assets by executor, II. 123, 133 n., 159 n.
property assigned in fraud of creditors assets, III. 123.
from what time Statute of Limitations runs in cases of, III. 633.
liability of grantee in fraudulent conveyance of decedent, I. 305 n.
claim for fraud must be presented, II. 237 n.
devastavit by, III. 377 n.
equitable relief for, III. 651 n.

FRAUDS, STATUTE OF,
as to personal liability of executor, III. 292, *et seq.*
promise to pay to cease opposition to will, not within, I. 397 n.

FRAUDULENT ASSIGNMENT,
property assigned is assets, III. 123. (*See* also I. 874, *ibid.*, n.)
charges assignee as executor *de son tort*, I. 304 n.
affects amount of executor's bond, I. 631 n.
should be inventoried, II. 182 n.
administrator may set aside, II. 254 n.
action to vacate, III. 130 n., 510 n.

FREE OF DUTY,
legacies and successions given, III. 90, *et seq.*

FREEHOLD. (*See* ACTION, COVENANT, REMEDIES, TORT.)
definition of, I. 810 n.
actions for trespasses to, do not at common law survive to executor, II. 6.
provisions of stat. 3 & 4 Wm. IV. c. 42, s. 2, II. 8.
actions on contracts relating to, when they survive to executor, II. 15, *et seq.*

FRIENDLY SOCIETY,
debt due by officer of, in what rank his executor must pay it, II. 191.
when representation not necessary to member of, I. 551.
unexercised power to bequeath death allowance out of funds of, not assets, III. 129 n.
quære, whether bequest to is bequest to charitable uses, II. 309.

FRUIT,
when it passes to heir, and when to executor, I. 833, 843 n.

FUNDS,
public. (*See* STOCK IN PUBLIC FUNDS.)

FUNERAL,
expenses of,
what allowable to executor as against creditors, II. 165—167.
as against legatees, II. 168.
allowed out of the estate in preference to all debts and duties, II. 165, 186, III. 303 n.
may be deducted from the value of account for probate duty where deceased domiciled in United Kingdom, I. 728, II. 165 n.
liability of executor for, when personal, III. 301, 313 n.
liability of executor for, when he has given no directions for the burial, III. 301—304.
charge of, upon land, its effect as to exonerating the personalty, III. 302, 303.
whether a husband can throw his wife's funeral charges on her separate estate, II. 166 n., III. 275 n.
whether will entitle undertaker to administration as creditor, I. 518 n.
retainer by executor for expenses of, III. 275 n., 537, 542.
heir voluntarily paying, of intestate, not entitled to have them refunded, III. 304 n.

FURNITURE,
what passes by a bequest of, II. 460 n, 468, 495 n.
"fixed furniture," II. 470.
bequest for life, II. 700 n., 707 n.

GAME,
when it passes to executor, I. 831.

GARTER,
in nature of heirloom, I. 846.

GENERAL WORDS,
of bequest, when restrained by the context, II. 465—468.

GIFT. (*See* DONATIO MORTIS CAUSÂ.)
deed of, properly executed and attested, may operate as a will, III. 70.
executor not compellable to complete gift of testator, I. 877, III. 277.

GIFT OVER, II. 496, *et seq.*, 556, *et seq.* (*See* CONDITIONAL LEGACIES, LAPSED LEGACIES.)

GOODS,
what passes by description of, II. 459, 465—468. (*See* LEGACY.)
ademption of specific legacy of, II. 638—640.

GOODS SOLD AND DELIVERED,
by executor, he may declare for, as such, II. 79.
to executor, he cannot be sued for as executor, III. 292.

GOODWILL,
what passes by bequest of, II. 471 n.
when assets, III. 103 n.
goes to surviving partner, I. 793 n.
to be accounted for, III. 131 n.
goes with bequest of business, III. 131 n.

GOVERNMENT,
legacy to, II. 274 n., 423.
debt due from, not assets at seat of government, III. 135 n.

GRANDCHILDREN,
who can take under description of, in a will, II. 370.
cannot generally take under description of "children," II. 359. 362 n.
rule as to vesting of gifts to, where settlor *in loco parentis*, II. 550 n.
take as class, II. 342 n., 507 n.
do not include descendants of, II. 370 n.

GRANDFATHER,
his nearness in blood to *propositus*, I. 497.
preferred, in degrees of kindred, to an uncle, I. 501.
postponed to brothers and sisters, I. 501, II. 904.
by the mother's side, II. 905.

"GRAND NEPHEWS AND NIECES,"
construction of, II. 373.

GRANT OF ARMS,
exemplification of, whether an heirloom, I. 846 n.

GRASS,
when it goes to the heir, and when to the executor, I. 837, 843 n.
action for cutting, when it survives to executor, II. 6.

GRAVESTONE. (*See* MONUMENT.)
property in, I. 846.
preference of legacy for, II. 675 n.

GREAT GRANDCHILDREN,
when included in gift to grandchildren, II. 370.

GREAT GRANDFATHER,
shall share in distribution with uncle, II. 905.

GUARANTEE,
when revoked by death of guarantor, III. 279.
to be presented as contingent claim, II. 238 n.7

GUARDIAN,
at what age an infant may choose, I. 579.
distinction between infant and minor as to nomination of, I. 579.
his right to administration *durante minoritate*, I. 578, 579.
when grant of administration refused to, I. 579.
rules of court as to such grant to, I. 579, 580.
appointed by Ecclesiastical Court, I. 578 n.
cannot be appointed to infant *en ventre de sa mère*, I. 579 n.
adlitem when necessary, I. 385 n.
additional bonds of guardian, I. 635 n.
executor of, takes property held as, I. 796 n.
claim for funds held as, preferred, II. 214 n.
claim against estate of, to be presented, II. 237 n.
collects rent of realty to be divided at twenty-one, II. 51 n.
marriage of ward authorized by feme sole as, II. 114 n.
presentment of claim, ratified by, II. 240 n.
payment of legacy to infant to, II. 717 n., 718 n.

HALF-BLOOD,
is equally near of kin with the whole blood, I. 500.
equally entitled to grant of administration, I. 500, 532 n.
equally entitled to a distributive share of effects, II. 374 n., 905, (*See*, II. 399 n., 400.)
brothers, etc., of half-blood shall share with their mother, II. 903.
nephews and nieces of, included in gift to nephews and nieces, *simpliciter*, II. 374.

HANDWRITING,
proof of,
mode of proving handwriting, I. 411.
rule that on proof of signing, instructions and knowledge of contents shall be presumed, I. 411, 412.
exceptions, I. 413, 414. (*See* PROBATE.)
comparison of, stat. 17 & 18 Vict. c. 125, s. 27. . . I. 411 n.
validity of will may be established by proof of handwriting of witnesses in certain cases, I. 416.

"HAVING,"
when construed "having had," II. 336.

HAWKS,
whether they pass to executor, I. 830 n.

HAY,
devise of land, when includes, II. 460 n.
gift of property about buildings, includes, II. 460 n.

HEDGES,
cut down or severed, executors shall have them, I. 834.

HEIR,
must be cited when a will is proved in solemn form affecting real estate, I. 401, 666. (*See* PROBATE, *manner of obtaining*.)
order for citation of, how obtained, I. 402.
when liable to costs, I. 402.
when bound by Probate, I. 666, *et seq.*
his title in certain respects exclusive of the executor, I. 844, *et seq.* (*See* ESTATE, HEIRLOOM, CONVERSION.)
to chattels real, I. 807, *et seq.*
to estate *pur auter vie*, I. 814.
to mortgages, I. 815.

HEIR.—*Continued.*
to chattels animate, I. 830—832.
to heir-looms, etc., I. 844—850.
to fixtures, I. 851.
to property converted in equity, I. 783—792.
to actions on convenants real, II. 15, *et seq.*
power of executor to enter the house descended to heir, to remove goods, II. 116.
power of heir to distrain goods of executor damage feasant, II. 116, 185.
consequence of executor not removing effects from the land, II. 116, 185.
what he shall bring into hotchpot under the statute of distributions, II. 842, 880.
who are entitled under the description of "heirs" in a will of personalty, II. 362 n., 378, 379 n., 380. (*See* LAPSED LEGACIES, PURCHASE, *words of.*)
legacy to A. and the heirs of his body, II. 330, 378.
"A. for life, and then to the heirs of his body," II. 378.
"the heirs of 'A.' or 'my heir,'" II. 379.
"my heirs or next of kin," II. 385.
to A. and his heirs does not lapse, II. 378—386, 501. (But *see* II. 500 n.)
class determined when, II. 341 n., 348 n.
includes after-born. II. 349 n.
means legatees, II. 383 n., 433 n.
next of kin, II. 433 n.
heirs and assigns, as words of limitation, II. 500 n.
of substitution, II. 502 n.
when the heir entitled under the word "family," II. 404.
when the heir takes as *persona designata*, II. 378, *et seq.*, 501. (*See* PURCHASE, *words of.*)
if the obligor makes the obligee his executor, in what cases he may sue the heir, II. 265, 629.
when put to an election, as to a legacy, II. 770.
assets in his hands, III. 140, *et seq.*
when entitled to be exonerated by the executor, III. 147, *et seq.* (*See* EXONERATION.)
not bound by ancestor's obligation, unless named, III. 225.
retainer by, II. 261 n., 262 n., III. 145 n.
of executor,
liability with respect to bond of ancestor, III. 224.
entitled to money covenanted to be laid out in land. I. 785.
of vendor or purchaser,
when entitled to the estate sold, I. 784, III. 265.
when entitled to have the purchase money paid by the executor, III. 265.
applied to his use, III. 265.
suit in County Court by, where estate does not exceed 500*l.*, III. 668.
may have an order for administration without suing others interested, III. 627.
may proceed by originating summons, III. 487.
statutory action against, III. 204 n., *et seq.*
found by decree against executor, I. 336 n.
when action may be brought by, III. 471 n.

HEIR-LOOMS,
what they are strictly, I. 844.
must go to the heir by custom, I. 845.
semble, must be of a ponderous nature, I. 845.
crown jewels, I. 845.
not devisable to executors, I. 846.
but alienable by the deceased in his lifetime, I. 846.
chattels in the nature of, I. 846.
monuments, coat armor, etc., I. 846.
coffin and shroud, I. 846.
collar of SS. and Garter, I. 846.
ancient horn, I. 847.
journals of the house of lords, I. 847.
charters and deeds belonging to inheritance, I. 847.
box in which they are kept, I. 847.
chattels settled or devised as, I. 848.

HEIR-LOOMS.—*Continued.*
proper mode of limitation, I. 849.
not liable to legacy duty till they vest absolutely, III. 17.
ought not to be applied unnecessarily in the payment of debts, I. 849.
chattels which go to the successor of corporation sole, in the manner of, I. 849.

HEREDITAMENT. (*See* INCORPOREAL HEREDITAMENT.)

HERIOT,
due to testator as lord, executor may sue for, II. 46.

HERITABLE BOND,
Scotch, descends to heir, II. 2 n.
heir not put to election as to, II. 770.

HOLDING OVER
of land, administrator of executor cannot sue for penalty for under 4 Geo. II. c. 28 . . . I. 294 n.

HOLOGRAPH WILL,
construed more benignly, II. 329 n.
attestation of, I. 97 n., 142 n., 148 n., II. 281 n.
dating of, I. 147 n.
partly printed, I. 147 n., 159 n.
authorized by statute, I. 148 n.
allowance for unskilfulness, I. 148 n.
in form of letter, etc., I. 148 n., 149 n.
not revoked by later informal will, I. 185 n.
republication of, I. 255 n.
probated on testimony of one witness, I. 388 n.
signature proved by legatee, II. 281 n.

HOPS,
whether they go to the executor, I. 836 n.

HOTCHPOT. (*See* DISTRIBUTION—ADVANCEMENT.)
doctrine of, under the statute of distributions, II. 879.
advancement by *mother* shall not be brought into, II. 880.
a child shall not bring into, for the benefit of the mother, II. 881.
directed in will, II. 646 n.

HOUNDS,
pass to executor, I. 830.

HOUSE,
bequest of property in, II. 459, *et seq.*
bequest of things "in and about," II. 465. (*See* II. 638, *et seq.*)
of heir, power of executor to enter, to remove goods, II. 116.
where testator contracts to build, liability of executor to complete the works, III. 311.

HOUSE OF LORDS,
journals of, property in, I. 847.

HOUSEHOLD GOODS,
what passes by description of, in a will, II. 464.
"goods and chattels in and about the house," II. 465.
"household furniture," II. 468.
"household effects," II. 470.

HOUSEKEEPING EXPENSES,
what shall be allowed in executor's accounts, III. 327 n., 425 n.

HUNDRED,
whether action can be maintained against by executor of lessee for injury done by rioters under stat. 7 & 8 Geo. IV. c. 31, s. 2. . .II. 8.

HUSBAND AND WIFE,
admissibility of evidence against each other, I. 404.
gift to and third person, construction of, II. 355 n., 371, 810 n., III. 42 n.
not "next of kin" to each other, II. 398.
mutual wills, I. 175 n., 176 n.
joint wills, I. 175 n., 177 n.
joint property, I. 794 n.
community property, I. 794 n.

HUSBAND,
his right to be his wife's administrator, I. 489, *et seq.*, 529 n., 702 n., II. 855 n. (*See* ADMINISTRATOR.)
except after decree of judicial separation as to property acquired thereafter, I. 82, 491.
or after protection order, I. 491.
right of his representatives, I. 492, 493, 570, 571.
his right after her death to her effects, II. 853.
in the United States, I. 886 n., II. 854 n.
inventory of her property as his, II. 182 n.
his action for slander to deceased wife, II. 26 n.
or other injury, II. 100 n.
for death of wife, II. 32 n.
right of his representatives, II. 853.
to her chattels real in cases outside Married Women's Property Act, I. 822—827.
in cases within that Act, I. 820, 821.
to her choses in action, in cases outside Married Women's Property Act, II. 69—72.
in cases within that Act, II. 54, 55.
his right to retain for his wife's funeral expenses against creditors out of her estate, II. 166 n., III. 275 n.
liability of him or his executor for debts of wife, III. 272, *et seq.*
for wife's funeral expenses, II. 170 n.
provisions of Married Women's Property Act as to, III. 272, 273.
general effect of Act, III. 273.
as to shares in Companies under Companies Act, 1862...III. 274.
his liability for *devastavit* of wife executrix, II. 164 n., III. 391. (*See* DEVASTAVIT.)

WIFE. (*See* WIDOW.)
Capacity of wife to make a will, I. 70—90.
1. *Before Married Women's Property Act.*
not affected by stat. 1 Vict. c. 26, I. 71.
she may make a will as executrix, I. 72, 494.
she may make a will by her husband's assent, I. 72.
what is a sufficient assent, I. 74.
assent only available, if he survive, I. 75.
a widow might prior to 1838 set up a will by recognition made before or during coverture, I. 75, 267. (*See* I. 72 n.)
she may make a will in pursuance of agreement before marriage, or under a power, I. 75, 76 n., 469 n.
power must formerly have been pleaded in the allegation of the executor, I. 80, 464.
present practice, I. 80 n., 88, 464, 465.
probate should be granted, though the power be ill executed, I. 76—79.
such a will not available without probate, I. 76, 470, 664.
unless of real estate, I. 269 n. (*See* I. 89, 468.)
but the production of such probate alone would not formerly induce a court of equity to act upon it, I. 664.
it may be proved without the husband's consent, I. 77, 464.
form of probate, I. 464. (*See* I. 88.)
not revoked by her surviving her husband, I. 90.
whether exercise of power by will of married woman makes property assets, III. 128—129 n.
husband's right to administration *ceterorum*, I. 465.
she may make a will of her separate property, I. 80, 81 n.

HUSBAND AND WIFE.—*Continued.*
in reversion as well as possession, I. 81.
of the accretions of her separate property, I. 81.
property acquired by a widow cannot pass by a will made during coverture, I. 72 n., 89, 248 n.
will of *feme sole* revoked by marriage, I. 89, 236.
wife of husband banished by statute, I. 90.
the queen consort, I. 90.
wife foreigner and domiciled abroad, I. 90—91.
will of *feme covert* of property acquired after a protection order, I. 82.
after a judicial separation, I. 82.
2. *Under Married Women's Property Act,*
provisions of the Act, I. 82—88.
general effect of Act as to woman married before January 1st, 1883... I. 88.
as to woman married on or after that date, I. 88.
no longer necessary to recite power in grant of probate, I. 88.
grant no longer limited, I. 88. (*See* 80 n., 464, 465.)
when her will of realty entitled to probate, I. 89, 268 n., 469, 470 n.
republication of will made during coverture still necessary, I. 72 n., 89. (*See*, I. 248 n.)
Act does not remove restriction of 43 Geo. III., c. 108... II. 309 n.
3. *In the United States,*
(*See*, American notes, I. pp. 71—90, in *loco.*)
republication by codicil after marriage, I. 253 n.
sufficiency determined in equity after probate, I. 355 n.

Wife executrix,
might make a will even before Married Women's Property Act, I. 72. (*See*, II. 110.)
and continue the chain of executorship, I. 294. (But *see* I. 494.)
whether if infant executrix take husband of full age, he shall have the execution, I. 272.
since January 1st, 1883, may be executrix as if *feme sole*, I. 273, 770, III. 391.
consent of husband no longer necessary, I. 273.
liability as to *devastavits* committed by, III. 391—393.
her husband's liability for her *devastavits*, before Married Women's Property Act, III. 392.
no longer liable unless he intermeddles, II. 164 n., III. 391.
her liability for husband's *devastavit*, III. 606 n.
her estate as executrix, II. 110.
her power before Married Women's Property Act, II. 163.
her power since, II. 163.
may now sue or be sued without her husband, II. 163, III. 520. (But *see*, I. 272 n.)
suing without her husband, not liable to give security for costs, II. 164.
ne exeat regno against, III. 635.
arrest of, under Debtors Act, III. 635.
attachment against, for want of answer, III. 636.
administration *de bonis non* at her death, I. 494.
letters testamentary to married woman in the United States, I. 273 n.
revocation by marriage, I. 694 n.
when husband becomes co-executor, I. 272 n., II. 114 n.
extent of husband's liability, II. 164 n.

Wife administratrix,
her capacity for the office of administrator, I. 542, II. 163, III. 391.
since January 1st, 1883, may act as, without control of her husband, as if a feme sole, I. 770, II. 163.
suing without her husband, need not give security for costs, II. 164.
husband need not join in administration bond, I. 621, 629 n.
old law as to, II. 163.
liability as to *devastavits* by, III. 391—393.
ne exeat regno against, III. 635.

HUSBAND AND WIFE.—*Continued.*
letters of administration to married woman in the United States, I. 273 n., 533 n., 538 n.
when husband becomes co-administrator, II. 114 n.
removal for marriage, I. 694 n., 703 n., II. 114 n.
Wife next of kin to an intestate,
administration shall be granted to her, as if a *feme sole*, I. 538.
law before Married Women's Property Act, I. 538.
where she or her husband die without asserting their claim who entitled to administer, I. 750.
to whom her distributive share shall be paid, II. 623. 730—736, 928.
Legacy to the Wife,
description of legatee, as "wife," II. 364 n., 371 n., 373 n., 427 n., 428 n., 431 n.
as one of the heirs, II. 380 n., 381 n.
descendants, II. 392 n.
relatives, II. 395 n.
next of kin, II. 399 n.
family, II. 406 n.
representatives, II. 411 n.
an executor cannot since Married Women's Property Act, set off debts due from husband against a legacy to the wife, II. 623.
(i) Under Married Women's Property Act,
must be paid to her only, II. 717 n., 731, 732 n.
what property comes under, II. 733 n.
(ii) Apart from Married Women's Property Act,
by common law payment must be to husband, II. 730.
so where wife foreign subject and husband entitled by foreign law, II. 738.
interference with husband's right:—
(*a*) by wife's equity to a settlement, II. 731, *et seq.*
what amount will be settled, II. 733 n.
form of settlement, II. 733 n., 736.
on whom equity binding, II. 737.
where the equity not allowed, II. 733 n., 735, 737 n.
when wife may waive her right, II. 735, 737.
(*b*) by gift being to separate use of wife, II. 731.
to widow. (*See* WIDOW.)
Widow's right to be her husband's administratrix, I. 494—496, 525 n., 530 n. (*See* ADMINISTRATION.)
stat. 21 Hen. VIII. c. 5, I. 494.
she is usually preferred to next of kin, I. 495.
when she may be set aside, I. 495.
forfeiture by divorce, I. 496.
retainer by widow for loan to husband out of her separate estate, II. 265.
Widow's right to a share of her husband's effects. II. 857—876 n.
her common law right by writ *de rationabili parte bonorum*, I. 2.
her right under the Statute of Distributions, II. 857, *et seq.* (*See* II. 400 n.
(*See* DISTRIBUTION.)
Chattels real of Wife,
(i) Apart from Married Women's Property Act,
right of husband's executor to, I. 822, *et seq.*
if they remain *in statu quo*, she will be entitled, and not the executor, I. 822.
and the rule is the same in equity, as in law, I. 822 n.
what amounts to a disposition by the husband, such as to bar her right, I. 822—825.
right of wife's administrator to, I. 826, *et seq.*
those vested during coverture go to the husband, *jure mariti*, I. 826.
secus, of those not vested, I. 826.
and where the wife is joint tenant with another of a lease, I. 826 n.

HUSBAND AND WIFE.—*Continued.*
(ii) Under Married Women's Property Act, I. 820—823.
provisions of Act, I. 820—823.
what property comes under Act, I. 821, 822.
devolution of chattels real on death of wife without disposing of them unaltered, I. 820 n.
jus mariti abolished, I. 821 n.
husband entitled on taking out letters of administration, I. 821 n.
Separate property of wife, I. 869, *et seq.*
(i) Apart from Married Women's Property Act,
what words will give a separate estate, I. 873, II. 479 n.
gift to the separate use of an unmarried woman excludes executors of future husband, I. 873.
by ante-nuptial settlement, I. 873.
ante-nuptial agreement in writing, I. 874.
by post-nuptial settlement, I. 874.
by wife's separate trading, I. 875.
by savings from wife's separate property, I. 875.
by gifts from the husband, I. 876.
by stock, etc., purchased by husband and wife in their joint names, I. 876.
in her name only, I. 876.
what is sufficient evidence of a gift by husband to wife, I. 877. (*See* III. 277, 278.)
gifts from third persons, I. 885.
husband's right to, on her death intestate, II. 69, *ibid.*, n. (*See* I. 821 n., 870 n., 873.)
pin-money, etc., I. 878, 879.
similar allowances, I. 879.
savings out of, when liable to husband's debts, I. 879.
in arrear when and how far recoverable, I. 879.
paraphernalia, I. 880—884. (*See* PARAPHERNALIA.)
property acquired by a wife after a protection order under Divorce Act, I. 82, 879.
(ii) Under Married Women's Property Act,
all gifts to married woman after Jan. 1st, 1883, become her separate property, I. 869.
woman married before Jan. 1st, 1883, not entitled to hold as separate property where title accrued before that date, I. 871.
sections of the Act, I. 871, 872.
construction of Act, I. 869 n., 871, 872.
saving as to settlements, I. 871, 872.
devolution of property undisposed of by married woman not affected by the Act, I. 820 n., 870 n., 873, II. 55.
semble, separate property under Act is equitable assets, III. 125 n.
provisions of Married Women's Property Act, 1870, now repealed, I. 869 n.
Choses in action of wife,
what they are, II. 55.
(i) Apart from Married Women's Property Act,
(a) right of executor of husband when wife survives, II. 54, *et seq.*
rule that wife is entitled, unless husband reduced them into possession, II. 55, 74 n.
distinction when choses in action accrue before or after marriage, II. 55.
instances,
bond to wife, *dum sola*, II. 56.
to husband and wife during coverture, II. 56.
to wife alone during coverture, II. 56.
bill or note to wife, *dum sola*, II. 57.
to wife during coverture, II. 57.
stock, II. 57.
arrears of rent, II. 58—59
tithes, II. 59.
estray, II. 59.
orphan's portion in chamber, II. 59.

HUSBAND AND WIFE.—*Continued.*
husband and wife lost in the same ship, I. 493, 555, II. 59, 498 n., 583.
what amounts to a reduction into possession by husband, I. 827 n., II. 60, *et seq.*, 73 n.
mere intention insufficient, II. 61.
mere appropriation of fund insufficient, II. 62.
receipt by husband, II, 62.
what does not amount to, II. 63—66.
receipt as trustee, II. 65.
effect of husband's bankruptcy, II. 60 n.
effect of proceedings in law and equity, II. 65, *et seq.*
effect of arbitration, II. 67.
agreements *pendente lite*, II. 67.
when executor of husband entitled to by reason of an ante-nuptial settlement, II. 67, 68.
by reason of a post-nuptial settlement, II. 68.
(b) right of administrator of wife when husband survives, II. 69, *et seq.*, 75 n.
as to her separate property, II. 69, *ibid.*, n.
distinction between husband's rights individually, and as administrator to wife, II. 70.
as to judgments and decrees, II. 67.
husband not entitled to revive judgment on death of wife, II. 72.
husband not entitled, where wife died joint tenant of a reversionary chose in action, II. 72.
(ii) Under Married Women's Property Act,
provisions of the Act, II. 54.
choses in action of women married since Jan. 1st, 1883, their separate property, II. 54.
so of women married before if their title accrued since, II. 54.
construction of act, II. 54.
husband can now only claim as administrator to wife not *jure mariti*, II. 55. (*See* I. 820 n.)

IDIOT,
incapacity of, to make a will, I. 17.
who is to be considered, I. 17.
incapacity of, to be executor, I. 276. (*See* I. 537.)

IF,
the word construed "when," II. 336.

ILLEGITIMATE CHILDREN. (*See* BASTARD.)
gifts to, by will, II. 364, *et seq.*

ILLITERATE PERSON,
precautions necessary for authenticating will of, I. 20, 414.
probate of will of, I. 414.

IMPERFECT GIFT,
no equity to complete, I. 877 n., III. 278.

IMPORTUNITY. (*See* WILL. *who is capable of making.*)
legal sense of the word, I. 55.
will obtained by, I. 55.

IMPRISONMENT,
for debt, abolition of, by "Debtors Act, 1869," III. 637. (*See* NE EXEAT REGNO.)

INCOME,
bequest of what it passes, II. 474, 478 n.
bequest of, when it vests capital, II. 527, 533, 542, 543.
tax, what words will exonerate legacy from, III. 92 n.
apportionment of, II. 481 n.
runs from what time, II. 753, n.

INCOMPLETE GIFT. (*See* IMPERFECT GIFT.)

INCONSISTENT CLAUSES. (*See* ELECTION.)
in same will, I. 219.
construction of, I. 219, II. 333.

INCONSISTENT WILLS,
revocation in case of, I. 212, 214.

INCORPORATION,
of unattested documents with will, I. 138—143.
documents must be clearly identified and in existence at date of will, I. 140 n.
republication of will by codicil not of itself sufficient to incorporate document not in existence at date of will, I. 141 n.
parol evidence admissible to identify the document, I. 143.

INCORPOREAL HEREDITAMENT.
lease of goes to executor, I. 812 (*See* ESTATE, *quantity in possession.*)

INDEMNITY,
whether executor entitled to, against contingent debts, before parting with assets to legatee, II. 654, *et seq.*
to surety of representative, I. 642 n.
of sheriff by verbal promise, action on, II. 101 n.
presentment of claim on covenant of, II. 238 n.
every trust instrument to be deemed to contain clauses for, as to loss of assets and reimbursement of trustees, stat. 22 & 23 Vict. c. 35, s. 31, III. 385. (*See* DEVASTAVIT.)

INDIA,
administration taken in, rights of administrator, I. 508.
domicil in, II. 922, 924.
property in, when assets in the hands of an executor, III. 114. (*See* III. 107 n.)
commission formerly allowed to executors in, III. 430.
necessary parties to suit for account of assets of intestate who died there, III. 622, *ibid.*, n.
rule in *Howe* v. *Dartmouth* does not apply to estate of person dying in unless parties entitled come here, II. 701 n.
what India Stocks are trust investments, III. 338.
what Indian railways, III. 339.

INDORSER,
presentment of claim as, II. 238 n.

INDUSTRIAL SOCIETY,
when representation not necessary to member of, I. 552.

INFANT. (*See* ADMINISTRATION *durante minoritate.*)
distinction between, and a minor, I. 579.
capacity of to make a will, I. 16, 45 n.
stat. 1 Vict. c. 26. . .I. 16.
will by minor who is a soldier, I. 172.
at what age capable of choosing a guardian, I. 579.
assignment of guardian by the Court, I. 579.
may be appointed executor at any age, I. 271, 272 n.
even *en ventre sa mère*, I. 271.
sole executor, cannot act till twenty-one, I. 272.
not entitled to interest on legacy, II. 745 n.
whether if an executrix infant take husband of full age, he shall have execution, I. 272.
liability of, when of age on judgment obtained against administrator *durante minoritate*, I. 586.
next of kin,
may not be administrator, I. 527 n., 538 n., 586 n.
administration granted to another *durante minoritate*, I. 537.
case where a *feme covert* is a foreigner and a minor, I. 537, 581.

INFANT.—*Continued.*
conversion of property by trustees of, I. 790.
payment of distributive share due to, II. 716, *et seq.*, 928.
legacy to. (*See* also, II. 741, *et seq*, and INTEREST.)
at what time to be paid, II. 706, 716.
where he dies under age, II. 708.
to whom to be paid, II. 716, *et seq.*
stat. 36 Geo. III. c. 52, II. 719, III. 498.
cost of suit to secure, how payable, II. 720.
confirmation by, after attaining majority, of previous application of legacy, II. 718.
when executor may allow maintenance out of, II. 720, *et seq.* (*See* MAINTENANCE.)
when the Court will order it, II. 721, *et seq.*
when payment for advancement allowed, II. 730.
trustees' orders made in respect of estates of, by the Court of Chancery, III. 598, 599.
will be barred under Statute of Limitations by neglect of his trustee to sue, III. 482.

INFLUENCE. (*See* WILL, *who is capable of making.*)
will obtained by, I. 56—65, 80, 162—167, 413, 657 n.
what sort will annul a will, I. 58.
burden of proof, I. 64 n.
intoxication as evidence, I. 51 n.
religious fears as evidence, I. 53 n.
inadmissible against foreign probate, when, I. 435 n.

INHABITANTS,
legacy to, II. 423.

INJUNCTION,
to restrain insolvent or bankrupt executor, I. 275.
to restrain assignees of bankrupt executor from paying over the fund to him, I. 275 n.
to restrain sale of lands under order of Probate Court, III. 652 n.
or under power in mortgage, II. 239 n.
to restrain further acts as executor, I. 693 n.
payment of barred debts, II, 225 n.
withdrawal of assets, I. 431 n.
to enjoin suit on executors bond I. 651 n.
Chancery Division will not grant pending litigation in the probate Division, I. 592. (*See*, III. 665 n.)
by executor to restrain co-executor from intermeddling before probate, III. 664.
when creditor restrained from proceeding on a judgment after administration granted, III. 483, 484.
when proceedings in foreign court restrained, III. 483.
to restrain publication of testator's letters, III. 481, 482.
mandatory can be obtained by executor for wrong to testator's estate, III. 481.
can be granted by County Court, III. 671.

INOFFICIOUS WILL, I. 43.

INSANITY. (*See* LUNATIC, WEAKNESS.)
what is, I. 20, 39.
criterion of, I. 38, 42, 46 n.
partial insanity, I. 33—38.
hereditary constitutional, I. 21 n.
onus of proof on party asserting it, I. 21, 23 n., 25 n.
letters written to testator no evidence of sanity, I. 52.
"unsound mind" defined, I. 46 n.
weakness of mind, I. 46 n., 47 n.
senility, I. 45 n., 47 n.
monomania, I. 36 n.
will made by person insane, I. 20, 21.
does not become valid though testator recover his mind, I. 21, 267.

INSANITY.—*Continued.*
during lucid interval, I. 22—33.
transfer in such case of *onus probandi*, I. 26, 26 n.
what is proof of lucid interval, I. 27—33.
act of making rational will, I. 28—32. (*See* 31 n.)
distinction between delirium and insanity, I. 33.
a will may be established though all the attesting witnesses depose to testator's insanity, I. 43, 144, 410.
effect of commission of lunacy, I. 43.
republication of, after recovery of mind, I. 267.
will not revoked by subsequent insanity, I. 21 n.
by insanity supervening between the instructions and the execution, I. 52.
an insane person cannot be an executor, I. 276.
grant of administration to another when executor becomes insane, I. 277.
revocation of administration granted to administrator who has become insane, I. 687.
administration granted during a lunacy without revoking former grant, I. 581.
when next of kin insane his next of kin must be cited by person seeking administration, I. 523.
stock standing in name of insane trustee or executor (stat. 13 & 14 Vict. c. 60), III. 598.

INSERTIONS,
in will whether they may be corrected in the probate, I. 421, *et seq.* (*See* PROBATE, CONSTRUCTION, FRAUD, RECTIFICATION, *manner of obtaining.*)

INSOLVENT. (*See* BANKRUPT.)
assignee of, on his death the estate of the insolvent vested in his executor, I. 763, 777.
statutes as to settlement of insolvent estate, II. 252 n.
payments before ascertainment of fact, II. 252 n.
judgments against, II. 252 n.
proof of contingent liability against, II. 253 n.
interest on claims against, II. 253 n.
representative's claim against, II. 253 n.
jurisdiction of claims against, II. 253 n.
preference of claims against, II. 253 n.
claim against, barred by non-presentment, II. 254 n.
conclusiveness of confirmation of claim against, II. 254 n.
action against, II. 254 n.
execution against, II. 254, n., 255 n.
claim of secured creditors against, II. 255 n.
insolvency only in foreign jurisdiction, III. 135 n.
appointed executor, probate cannot be refused to, I. 274, 452.
control of, by appointing a receiver, or by requiring security, I. 275, 276. (*See* RECEIVER.)
executor having committed *devastavit*, discharged under the Act, III. 607.

INSTRUCTIONS. (*See* WILL.)
for a will,
shall be presumed on proof of testator having signed will, I. 411, 412.
cannot be used for construction of will, II. 337.

INSURANCE,
power of executors of assured to re-assure, II. 130.
of executors of assurer to procure indorsement of policy against fire, II. 130.
insurable interest of executor in another's life, III. 123 n.
executors not bound to insure or continue insurances, III. 333, *ibid.*, n.
proceeds and policies as assets, II. 22 n., III. 131 n.
what bequest carries, II. 462 n.

INTENTION. (*See* CONSTRUCTION.)
of testator as to revocation, I. 218, 242 n., 243 n. (*See* WILL, *revocation.*)
of testator the guide to construction of his will, II. 327, 333, *ibid.*, n., 338, 520, *et seq.*
particular in will to be sacrificed to general, II. 330. (*See* II. 379 n.)
on failure of particular, general carried out, II. 394.

INTEREST. (*See* MAINTENANCE.)
money due for,
may be apportioned, II. 45, 50 n.
upon debts, before distribution, II. 226 n.
preferences, II. 226 n.
up to time of payment, II. 226 n.
against insolvent estates, II. 253 n.
set-off against legacy, II. 620 n.
upon legacies, II. 741, *et seq.*
on specific legacies, II. 438 n., 489 n., 741, 750 n.
charged on real estate, II. 741.
charged on proceeds of sale of real estate, II. 741 n
on general legacies, II. 741.
not on legacy to infant executor, II. 745 n.
where no time for payment is fixed, II. 741—744.
payable ordinarily after a year, II. 742, 743.
payable from death in case of legacy in satisfaction of debt, II. 742.
in case of legacy to children, II. 742.
on annuities, II. 744.
on legacies for life, II. 696—698.
on contingent legacies falls into residue till contingency occurs, II. 702 n.
where time for payment is fixed, II. 744—748.
generally not payable before time arrives, II. 745.
exceptions in case of,
severance of legacy immediately, II. 745.
legacies to children of testator, II. 745.
when it is the apparent intention that the legatee should be maintained thereout, II. 746.
legacy given with interest, II. 747.
where infant legatee dies under age who entitled to interest, II. 747.
when payment of an admission of assets, III. 603. (*See* III. 540.)
rate of interest, II. 748—749.
compound when allowed, II. 749.
legatee refunding not to be charged with, II. 798.
in what cases executor to be charged with, in his accounts, III. 363 n., 402, *et seq.*, 413 n.—418 n.
at what rate, III. 404—410, 418 n.
whether simple or compound, III. 407—409, 417 n.
allowance of, to executor for money advanced by him, III. 418 n., 433.
what passes by a bequest of the "interest" of a particular fund, II. 478.
when gift of vests capital, II. 527—533, 543.
payment of, on bond of testator, no admission of assets, III. 540, 541.
surety's liability for, I. 637 n.

INTERLINEATIONS. (*See* ALTERATIONS.)
how attested, I. 135 n.
if immaterial, do not affect will, I. 160 n.
not presumed fraudulent, I. 160 n.
not obliterations, I. 183 n.

INTERLOCUTORY ORDERS OR JUDGMENTS,
appeal from, I. 685.

INTERROGATORIES,
will made by, valid, I. 56.
may be administered to a person respecting his knowledge of testamentary papers, I. 373 n.

INTESTACY. (*See* ADMINISTRATION, BASTARD, CROWN, DISTRIBUTION, NEXT OF KIN.)
sect. 8, of Real Property Limitation Act, 1874, does not extend to cases of, III. 630 n.

INVENTORY. (*See* PROBATE DUTY.)
stat. 21 Hen. VIII. c. 5, as to inventory by executor, II. 173.
stat. 23 Car. II. c. 10, as to inventory by administrator, II. 173.

INVENTORY.—*Continued.*
ancient ecclesiastical law respecting, II. 174.
in what cases, and by whom, the exhibiting of, is compellable, II. 174, 180 n., III. 662.
after what lapse of time, II. 177.
what persons are compellable to exhibit, II. 177.
consequences of hanging back when inventory assigned, II. 178.
in practice not usually now required, II. 174, 175.
generally required in the United States, II. 180 n.
neglect of it, a *devastavit*, III. 353 n.
and breach of bond, II. 160 n.
and cause for removal, I. 704 n.
amendment of, II. 184 n.
appraisement required, II. 181 n., 185 n.
form and contents of, II. 178, 179, III. 662.
how signed, II. 181 n.
should include representative's own debt, II. 182 n., 626 n., III. 132 n.
trust property, III. 138 n.
property fraudulently conveyed, III. 353 n.
need not contain property situate abroad, II. 179.
whether the Probate Court can entertain objections to, II. 179, III. 663.
effect of, II. 183 n., 184 n., 231 n.
in evidence on a plea of *plene administravit*, III. 539, 540.
given to executor by tenant for life of chattels, II. 705, 706 n.
Scotch, provisions as to where estates under £300, I. 731.

INVESTMENTS. (*See* DEVASTAVIT.)
by executor, what are authorized, III. 337—341. (*See* also, II. 696, *et seq.*)
on real security where loss occurs, III. 333, 334 n.

IRELAND, (*See* also DOMICIL.)
assets in, III. 106.
probates granted in, to be of like force, as probates granted in England on being rescaled, by stat. 20 & 21 Vict. c. 79, s. 95...I. 430, 435.
probate of will of testator domiciled in before Aug. 6, 1861...I. 441, 442.
since Aug. 6, 1861...I. 446.
Mortmain Acts do not apply to, II. 309.

ISSUE. (*See* PREFACE, *s.* 29 *of Wills Act.*)
who are entitled under a gift to "issue" in a will of personalty, II. 382 n., 386.
when they take *per capita* and when *per stirpes*, II. 907 n.
to A. and his issue, II. 386, 907.
to A. or his issue, II. 377 n., 393—395.
to several persons and the issue of their respective bodies, II. 386.
to several persons and their respective issue to take *per stirpes*, II. 387.
to A. and his issue as tenants in common, II. 387.
to A. for life, and after his death to his issue, II. 387.
how construed in gifts of realty, II. 386 n.
construed differently in gifts of realty and personalty in same will, II. 332.
what is meant by "failure of issue," II. 377 n.
when all descendants take under the description of, II. 363 n., 388, 390 n.
when children only, II. 389.
"without having issue," construed "without issue," II. 336.
"leaving no issue," construed "having had no issue," II. 336 n.
when a word of purchase when of limitation, II. 387 n., 501 n.

ISSUES OF FACT,
questions under Trustee Relief Acts may be raised under, III. 503.
where judge may order to be tried where execution sought against executor, III. 552.

JEST,
will made in, I. 151 n.

JEWELS,
what passes by bequest of, II. 460 n., 488, 490 n.

JEWS,
charities for, II. 282 n.

JOINDER,
of parties. (*See* PARTIES.)
of counts, III. 521. (*See* REMEDIES.)

JOINT CONTRACT,
interest in, when it passes to executor, II. 48.
remedy upon, does not go to executor, III. 448, 449.
except when the *interest* is several, III. 449.
liability on, does not survive at law against executor, III. 240, 560 n.
enforcing judgment against surviving defendants, III. 241, 242.
when it does in equity, III. 243—250.
right of one of co-contractors to have contribution from executors of another, III. 248. (*See*, III. 290 n.)
joint and several bond what words constitute, III. 243 n. (*See* BOND.)
joint and several covenant what words will constitute, III. 449 n.

JOINT TENANTS. (*See* JOINT CONTRACT, TENANTS IN COMMON.)
personalty, of which the deceased was joint tenant, shall not at law go to his executor, I. 775.
except in the case of partners in trade, etc., I. 775.
leases held by, I. 776, 814.
when purchasers held to purchase as, I. 776, *ibid.*, n.
legacy to, does not lapse by the death of one, but survives to the other, II. 505, 809.
effect of revocation of gift to one of several, II. 505.
survivorship between, as to residue, etc., II. 506 n., 809, 811 n., 820.
when legatees take as, II. 809. (*See* II. 352 n., 400 n., 412 n.)
what words constitute, II. 393, 810 n., 811 n.
what words will effect a severance, II. 72, 821.
husband and wife and third person what shares they take in, II. 371, 810 n.
"A. and B. and their children" what shares they take in, II. 355 n. (*See* II. 393.)

JOINT WILLS, I. 174, *et seq.* (*See* MUTUAL WILLS.)

JOURNEYS ACCOUNTS,
writ by,
what it was, III. 460 n.
origin of the term, III. 460 n.
where *plaintiff* died, the writ could not be brought by his executor, III. 460, 531.
where *defendant* died, the plaintiff might have had the writ against his executor, III. 531. (But *see* n.)

JUDGE,
executors of *scire facias* against, to certify bill of exceptions, III. 277.

JUDGMENT. (*See* COSTS, EXECUTION.)
for testator,
how to be enforced by the executor, II. 91, *et seq.*, 102 n., III. 468.
fi. fa. issued in testator's lifetime may be executed after his death, III. 468. (*See* also, II. 96.)
procedure as to entry of, II. 97, 98.
entry of, *nunc pro tunc*, II. 95.
when executor may enter upon warrant of attorney, II. 97.
how enforced by administrator *de bonis non* when obtained by original executor, II. 110.
what bequest carries a, II. 489 n.
against testator, III. 587 n.
its precedence in payment by executors to all other debts, II. 200, *et seq.*, 212 n.
what sort of judgment, II. 200.
if entered up after testator's death, where he dies after verdict, II. 200.

JUDGMENT.—*Continued.*
but not if entered up where he dies between interlocutory and final II. 200.
must formerly have been docketed, II. 202.
must now be registered, II. 203, *et seq.*
effect of not registering, II. 203.
judgments not registered to have no priority, 23 &24 Vict. c. 38, s. 3...II. 203.
notice of unregistered judgment to executor gives it no priority, II. 230.
foreign judgment, II. 102, n., 201.
Irish judgment, II. 201.
the judgments have no precedence amongst themselves, II. 204.
executor liable upon, whether the cause of action would have survived or not, III. 239.
remedy upon, III. 240—242, 550.
formerly by writ of revivor, or entry of suggestion, 550, 551.
after judgment of execution, the plaintiff might bring debt suggesting a *devastavit* against the executor, III. 552.
procedure under Judicature Act, III. 240—242, 552.
entry of, when to be dated, II. 201.
nunc pro tunc, II. 95.
when may be entered against testator on warrant of attorney, III, 555.
for executor, II. 82.
against executor or administrator,
what it ought to be, III. 543, 584 n., 585 n.
on plea of release to testator, III. 543.
plene administravit, III. 543.
to what amount, III. 544.
against one of several executors, III. 545.
ne unques executor, III. 543, 544.
release to *executor*, III. 544.
on confession, II. 154 n., III. 587 n.
presentment and allowance of, II. 235 n., 240 n., 252 n.
of assets *in futuro*, III. 546, 584 n.
could not be had when plea of *plene administravit* traversed, III. 546.
plaintiff, by taking it, admits the assets fully administered to that time. III. 545, 546.
in debt or *scire facias* upon, he cannot show assets before judgment, III. 546.
costs on, III. 546.
execution, on, III. 552.
proceedings under Judicature Act, III. 552.
proceedings under old law, III. 552, 553.
proceedings on judgment against executor *de bonis testatoris*, III. 547, 585 n.
by *fieri facias*, III. 547.
by *scire fieri* inquiry, III. 547, 548.
by attachment under Ord. XLV., III. 547 n.
by action of debt suggesting a *devastavit*, III. 548, *et seq.*
against administrator *durante minoritate*, enforcible against executor when of age, I. 586.
its rank in the payment of debts, II. 200, *et seq.*, 256, 257.
without notice of a superior debt, may be pleaded in bar, II. 229.
what is sufficient notice to bind executor, II. 230.
executor's power of preference by confessing judgments, II. 256, III. 535 n. (*See* DEBT.)
pleading an unsatisfied judgment and *plene administravit præter*, III. 535.
against executor *de son tort*, I. 312 n., 319 n.
against ancillary administrator, I. 444 n.
against predecessor, II. 114 n.
against heirs and devisees, III. 208 n.

JUDICATURE ACTS. (*See* STATUTE INDEX *and* INDEX OF ORDERS AND RULES.)
have not altered Probate practice in non-contentious business, I. 387 n.
contentious business governed by, I. 391 n.
semble, do not alter powers of administrator before the grant of letters, I. 485, 486.

JUDICATURE ACTS.—*Continued.*
provision of, that rules of Equity shall prevail, explained, II. 124 n. (*See* I. 769, II. 625.)

JUDICIAL SEPARATION. (*See* HUSBAND AND WIFE.)
will of *feme covert* of property acquired after, I. 82, II. 111.
right of husband to administer to wife after, I. 491 n.

JURISDICTION. (*See* NE EXEAT REGNO.)
as to grants of Probate and letters of administration assigned to Probate Division of High Court, I. 341.
semble, other divisions of High Court have jurisdiction also, I. 344.
trustees out of, Court of Chancery may make orders as to estates of, III. 599.
executor being out of, "at the expiration of twelve months" from death of testator, means "at or after" the expiration of twelve months, I. 596 n.
service out of, I. 596 n., 619 n.
probate jurisdiction in the United States, I. 341 n., 345 n., 352 n., 429 n.
to commit for contempt, I. 358 n.
to enforce stipulations, I. 358 n.
construction to settle distribution, I. 352 n., 356 n.
against assets controlled by foreign representatives within jurisdiction, I. 429 n.
as to validity of foreign probate, I. 444 n.
equity jurisdiction, I. 355 n.
to establish lost will, I. 458 n.
concurrent with courts of law, III. 651 n.
courts of probate, III. 653 n., 656 n.
in accounting, III. 665 n.
in distribution, III. 666 n.
presumption in favor of, I. 483 n.

JURY,
in contested probate, I. 386 n.
verdict of, I. 386 n., 402 n.
in contentious business, I. 392.
upon petition to revoke, I. 398 n.

JUS ACCRESCENDI, I. 776.
disponendi, as to partnership chattels, I. 776 n.

JUS MARITI,
abolished by Married Women's Property Act as to property affected by it, I. 821 n., II. 55.

JUST ALLOWANCES,
made without special order in taking account, III. 494.
instances of such, III. 494, 495.

KIN. (*See* NEXT OF KIN.)

KING. (*See* CROWN.)
capacity of the king to make a will of personalty. I. 14. (*See* II. 590 n.)
stat. 39 & 40 Geo. III. c. 88, s. 10. . . I. 14, 15.
probate of his will,
the probate court has no jurisdiction to grant, or letters of administration. I. 15.
but the will cannot be relied on without probate, I. 352, 353.
may be constituted executor, I. 269.
he may, in such case, appoint persons to officiate the will, I. 269.
debts due to,
from executor, goods of deceased not liable to satisfy. I. 765.
their priority, II. 190—191, 221.

KNOWLEDGE,
of testator of contents of his will, I. 412, *et seq.* (*See* EVIDENCE *in Testamentary Causes.*)

KNOWLEDGE.—*Continued.*
required of blind testator, I. 19 n.
deaf and dumb testator, I. 19 n.
where will executed by mark, I. 104 n.
shown by circumstantial evidence, I. 47 n., 60 n., 133 n.
presumption of, I. 115 n., 133 n.
dispenses with reading will to witnesses, I. 132 n.
where draftsman beneficiary, I. 164 n., 166 n.

LABORER,
wages of, when entitled to preferential payment, II. 222.

LACHES,
effect of, as to barring proceedings in equity. II. 656 n., 661 n., III. 433, 543 n., 628 n.

LAND. (*See* REAL ESTATE.)
action for recovery of. (*See* EJECTMENT.)
sale of, by probate court, III. 167 n.
under power to pay debts and legacies, III. 203 n. (*See* ASSETS.)
charged with debts, III. 190 n., *et seq.*
after personalty, III. 215 n.
legacies, III. 189 n., *et seq.*
under contract of purchase, goes to executor, III. 139 n.
reimbursement for payments advanced on account, III. 139 n.

LANDLORD AND TENANT. (*See* EMBLEMENTS, FIXTURES, LEASE, RENT.)
apportionment of rent under lease made by tenant for life, II. 44, *et seq.*
covenant to repair,
when executor liable upon, III. 225, 226.
personally, III. 262.
covenant to pay rent, III. 254.
liability of executor upon, III. 254, *et seq.* (*See* RENT.)
after assignment, III. 262.
personal liability of executor for rent in his own time, III. 256, *et seq.*
covenant to discharge tenant of quit rent, when executor of landlord liable on, III. 225, 226.
as to right to fixtures, I. 867 n., 868 n.

"LANDS AND HEREDITAMENTS,"
will include leases for lives, III. 118 n.

LANDS CLAUSES ACT,
compulsory sale of lunatic's land under, I. 792.

LANGUAGE,
of a will, I. 156. (*See* WILL.)
may be in any tongue, I. 156.
probate of will in foreign, I. 466, 668.
construction of, I. 668, 669. (*See* II. 329 n.)

LAPSED LEGACIES, II. 496, *et seq.* (*See* CONDITIONAL LEGACIES.)
lapse by death of legatee *before* testator's, II. 496—514.
general rule of lapse, unless legatee survives testator, II. 496.
bequest of debt due from legatee to testator, II. 498, 499 n.
where legacy is given to the legatee *and his executors, etc.*, II. 499
no lapse by death of legatee in trust, II. 514.
rule controlled by manifest intention, II. 501.
legacy to a man *or* his personal representatives, II. 502, 503.
and his heirs, II. 500.
gift to children in a class or their representatives whether substitutional, II. 501, 502.

LAPSED LEGACIES.—*Continued.*
whether children can take in lieu of their parent where their parent would have had no title, II. 502 n., 504.
distinction between substitutional gift after gift to class and after gift to individuals, II. 504.
where the issue take as substitutes and predecease their parent they are not entitled, II. 504, 504 n.
secus, if they take by original gift, II. 504 n.
but they need not in either case survive the tenant for life, II. 504 n.
lapse of legacy under a power by death of legatee before appointor, II. 505.
legacies given to joint tenants, II. 505, 809.
tenants in common, II. 506.
in a class, II. 343 n., 350 n., 506.
with a clause of survivorship, II. 508.
whether the accrued as well as original shares pass to survivors, II. 508.
executors in a class, II. 508, 809, *et seq.*
in what cases a legacy in remainder will lapse by death of the prior legatee in the testator's life, II. 511.
legacy to child, when lapse of, prevented by stat. 1 Vict. c. 26, II. 512, 513.
American statutes, II. 512 n.
lapse by death of legatee *after* testator's, II. 514—553.
when no period for payment is specified, II. 514.
if legatee die within a year from testator's death, no lapse, II. 514.
when a future time for payment is specified, II. 515, *et seq.*
legacy vested or contingent.
Rule I. when the bequest is immediate and payment alone postponed, vested, II. 515—523.
legacy "*to be paid*," at twenty-one, II. 519.
rule controlled by apparent intention, II. 520.
as that the legacies shall not vest till the debts are paid, II. 521.
dies incertus conditionem facit, II. 522.
Rule 2. a legacy given "at," "if," "when," "in case of," "provided," the legatee attains twenty-one, contingent, II. 524, *et seq.*
direction to transfer "from and after," or to pay at, a future period, II. 526.
exceptions to the rule, II. 527, *et seq.*
gift of intermediate interest, II. 527—533.
previous estate to another, II. 533.
when a gift is postponed for the convenience of the fund, it is vested, II. 544.
so where life estate precedes, II. 544 n.
secus when the obtaining a certain age is part of the description of the legatee, II. 545.
legacies given over on a contingency, II. 546—550.
vesting of portions, II. 550.
legacies given by way of remainder to children, etc., in a class, II. 351.
bequest to a class void for remoteness as to one member void altogether, II. 552.
when contingent interests in legacies pass to executors of legatees, II. 88, 496.
strong inclination of courts to prevent lapse of a residuary bequest, II. 523 n.
effect of declaration by testator as to time of vesting, II. 557.
interest of contingent legacy falls into residue till contingency occurs, II. 698 n.
lapse of legacies payable out of real estate, II. 553—556.
charged on a mixed fund of realty and personalty, II. 557.
when residuary legatee entitled to, II. 803, *et seq.* (*See* II. 462 n., 698 n.

LAST SICKNESS,
what is, to justify nuncupative will, I. 169 n.

LAST SICKNESS.—*Continued.*
wife's estate not charged with expense of, II. 170 n.
expenses of, preferred, II. 172 n.

LAST WILL,
reference in codicil to, I. 250 n., 252 n.
a later will of which nothing is known but that it was headed "last will," is no revocation, I. 216, 222.

LATENT AMBIGUITY. (*See* AMBIGUITY, CONSTRUCTION, LEGATEE.)

LAW AND FACT,
question of fact,
testamentary capacity, I. 47 n.
fraud in obtaining will, I. 54 n.
undue influence, I. 60 n., 65 n.
mental capacity, I. 413 n.

LEASE. (*See* LANDLORD AND TENANT, RENT.)
for years,
definition of, I. 809, 810, 817 n., 818 n.
disposable by will as personal property at common law, I. 2.
validity of disposition of by will depends on English law, II. 915 n.
devolves on intestacy according to English law, not according to *lex domicilii*, II. 915 n.
passes in all cases to the executor, I. 809, 817 n. (*See* ESTATE, *quantity in possession.*)
devised in tail, I. 811.
specifically devised, I. 812. (*See* I. 261 n., II. 451, III. 267, 268, and MISDESCRIPTION.)
proviso for forfeiture if executor of lessee shall become bankrupt, I 766.
whether can be assigned by administrator, I. 583, 595, II. 132 n.
administration limited to assignment of trust term, I. 605.
executor cannot in general waive it, I. 814. (*See* III. 256, *et seq.*, and RENT.)
except when he has no assets, and the profits are less than the rent, III. 258—261.
executor not liable for breach of covenant after disposing of, II. 655 n.
when legatee takes *cum onere*, III. 268.
terms attendant on the inheritance, when assets, III. 122.
devastavit in respect of III. 324.
to what extent assets, I. 773, III. 102, 139 n.
of land in Ireland, assets in England, III. 106 n.
equitable interest in terms, I. 814.
bequest of, when adeemed, II. 640, 641.
succession duty payable on, III. 50.
semble is land within Mortmain and Charitable Uses Act, 1891... III. 213 n.
trustee of, refusing to assign, III. 599.
pur auter vie, I. 814. (*See* ESTATE *pur auter vie.*)
for life, remainder to executors of lessee, I. 827 *et seq.* II. 84.
how made freehold or chattel, I. 811 n.
leases for lives will pass by words, lands and hereditaments, III. 118 n.
power of executor to assign or underlet, II. 125—126. III. 254.
when restrained by a condition not to assign, II. 125—126.
purchaser from executor not bound to inquire whether testator's debts are paid, I. 782 n., III. 629 n.
underlease by executor or administrator,
if the rent be reserved to himself, it will, on his death, go to his executors and not to the administrator *de bonis non*, I. 774.
but such executor cannot distrain, II. 119.
executor of executor or administrator *de bonis non* cannot avoid underlease, II. 125.
underlease an exceptional mode of administering and puts lessee on inquiry, II. 126.
executor cannot give an option of purchase to sublessee, II. 126.
renewed by executor, shall be assets, III. 101.

LEASE.—*Continued.*
renewable, rights of tenant for life and remainderman *inter se*, II. 704 n., III. 276.
specific performance of covenant to renew enforced against executor, III. 265.
liable, as occupant, for rent, II. 52 n.

LEAVING,
the word construed "having," II. 336.
construed "having had," II. 336 n.

LEGACY. (*See* LEGATEE, PAYMENT.)
definition of, II. 269. (*See* I. 94 n., II. 473 n., 486 n.
to superstitious and charitable uses, II. 282, *et seq.* (*See* CHARITABLE USES.)
Lapsed legacies, II. 496. (*See* LAPSED LEGACIES.)
Specific legacies, II. 436, *et seq.* (*See* SPECIFIC LEGACIES.)
Demonstrative legacies, II. 439, 632, 676. (*See* DEMONSTRATIVE LEGACIES.)
General legacies. II. 436.
Of the description of the things bequeathed, II. 459, *et seq.*, 462 n. (*See* WORDS.)
"goods," "chattels," "effects," "things," II. 459.
"household goods," II. 464, 468 n.
"goods and chattels in and about the house," II. 465. (*See* II. 519—522.)
"movables," II. 469 n.
"goods" and other general words restrained by the context, II. 465—467.
"other things," II. 465.
"et cetera," II. 466 n.
"household furniture," II. 468.
"household effects," II. 470.
"fixed furniture," II. 470.
"stock on farm," I. 838, II. 471.
"utensils," II. 472.
"money," II. 472—475.
"securities" for money, II. 476.
"money in the funds," II. 475.
"stocks" II. 476 n.
"income," II. 478 n.
"support," II. 483 n.
"papers and accounts," II, 489 n.
"foreign bonds," II. 476 n.
"shares," II. 476.
"interest" or "dividends" of a particular fund, II. 478.
"annuity," II. 480.
"debts," II. 486.
"jewels, pearls, necklaces," II. 488, 490 n.
"plate," II. 489.
"books," II. 489.
"personal ornaments," II. 490.
"linen and clothes," II. 490.
"medals," II. 490.
"portraits," II. 490.
"plantation" in West Indies, II. 490.
property contracted for by testator will pass by description of it as his actual property, II. 495.
bequest to purchase annuity for life for legatee, II. 486.
mistakes in the description of a legacy, II. 491—494.
rectified by reference to the terms of the gift and evidence of extrinsic circumstances, II. 491.
Vested or contingent, II. 495, *et seq.*, 514 n., 516 n., 520 n. (*See* LAPSED LEGACIES.)
payable *in futuro*, II. 712, *et seq.* (*See* APPROPRIATION.)
Legacies on condition, II. 558, *et seq.*, 570 n., 583 n. (*See* CONDITIONAL LEGACIES.)
to executors, whether they can take without accepting the office, II. 553, *et seq.* (*See* CONDITIONAL LEGACIES.)
by way of annuity "for his trouble," II. 600.

LEGACY.—*Continued.*
of a "handsome gratuity," void for uncertainty, II. 600.
Cumulative legacies, II. 602, *et seq.*
Legacy charged on land, II. 553, *et seq.*
Satisfaction of debts, etc., by legacies, II. 609, *et seq.* (*See* SATISFACTION.)
Release of debts, etc., by legacies, II. 618. (*See* DEBTS.)
legacy by a creditor to his debtor, II. 618.
Ademption of, II. 632, *et seq.* (*See* ADEMPTION.)
Revocation of,
under a false impression of fact, I. 220—224, II. 800 n.
Abatement of, II. 632, *et seq.* (*See* ABATEMENT.)
Assent to, by executor, II. 677, *et seq.* (*See* ASSENT.)
Payment of, II. 690, *et seq.* (*See* PAYMENT OF LEGACIES.)
Purchase of, by executor from legatee, II. 125, III. 401, 402 n. (*See* III. 402 n., 628 n.
Interest upon, II. 741, *et seq.*, 750 n. (*See* INTEREST.)
Refunding of, II. 801. (*See* REFUNDING OF LEGACIES.)
Stamp duties on, III. 1, *et seq.* (*See* LEGACY DUTY.)
For life, remainder over, II. 695, *et seq.* (*See* TENANT FOR LIFE.)
Recovery of. (*See* REMEDIES.)
Assignment by executor of his reversionary legacy, III. 606.
the assignee takes it subject to the equities which attached to the executor, III. 606. (But *see* III. 606 and ASSETS FOLLOWING.)
by legatee, I. 673 n., II. 739 n
to executor, II. 739 n.
carried by general assignment, II. 739 n
Release of, II. 739 n.
Set-off of, II. 678 n.
no action at law lies for, III. 517.
except in consideration of forbearance, III. 295.
or for a specific legacy after assent, III. 517.
or where executor ceases to hold the legacy as such, III. 518.
action at law, in the United States, III. 558 n.
in equity, III. 654 n.
in Probate Court, III. 665 n.
attachment of II. 739 n., III. 654 n.
adverse testamentary provision, II. 740 n.
Statute of Limitations runs, when, III. 570 n., 659 n.
no suits for, to be entertained in Probate Court, III. 663.
not exceeding 50*l.* recoverable in County Court, III. 519.

LEGACY DUTY, III. 1, *et seq.* (*See* SUCCESSION DUTY.)
when legacy given, free of, I. 8 n., III. 90, *et seq.*
when payment of, evidence of admission of assets, III. 604 n.
governed by 55 Geo. III. c. 184, and 45 Geo. III. c. 28, as modified by 43 Vict. c. 14, and 44 & 45 Vict. c. 12, III. 1.
power and provisions of former Acts to extend to, III. 9. (*See* I. 45.)
where testator died on or before April 5th, 1805. . .III. 2 n.
where testator died after April 5th, 1805. . . III. 1—8.
chargeable on all legacies and residues, III. 2—5.
except where estate under, 300*l.*, III. 2 n.
amount of duty, III. 6—8.
formerly the duties were on the *receipts*, III. 9.
stat. 36 Geo. III. c. 52, duties to be paid by executors, etc., on retaining or paying legacies, etc., III. 10.
what shall be deemed a legacy, III. 111. (*See* also III. 36, 37.)
if not paid before retainer, a debt by them ; if legacy paid without deducting a debt by both parties to the king, III. 10.
discharge of executors' liability, III. 10 n.
if legatee refuses to accept the legacy, the duty being deducted, executor to have costs of suit subsequently instituted for such legacy, without formal tender of legacy, III. 22, 23.
if suit instituted for administration, court to provide for the payment of the duty, III. 23.
executors may discharge legacies on payment of duty accrued, III. 24.
no legacy to be paid without a receipt, III. 24.

LEGACY DUTY.—*Continued.*
provisions as to receipts, III. 25—27.
mistakes in paying duty rectified, III. 28.
legacy given to an infant or absentee, III. 28, 498.
compounding for duty, I. 724, III. 29, 30.
commutation of duty on future legacies, III. 31 n.
legacy refunded, duty repaid, III. 29, 32.
executors, etc., retaining their legacies, to transmit particulars to the commissioners, III. 32.
duty on administration afterwards made void, III. 33.
stat. 45 Geo. III. c. 28.
legacies out of real estate subject to duties, III. 34.
but under 51 & 52 Vict. c. 8, now to be charged with Succession Duty, III. 34 n.
what shall be deemed a legacy under that Act, III. 34.
Act shall not extend to appointment by will under settlements, III. 35.
by whom duties to be paid, III. 35.
stat. 39 Geo. III. c. 73, legacies of books bequeathed to body corporate, III. 81, 82.
limitation of time for recovering against crown, III. 98.
Amount of duties payable, III. 5—8.
what shall be considered a legacy paid before 31st August, 1815, III. 68 n.
question now immaterial, III. 68.
in case of a legacy to married person duty at lower rate, if husband or wife chargeable at lower rate, III. 68, 69.
in what cases duty is payable on the interest as well as the principal, III. 68.
Upon what subject duties are payable, III. 11, *et seq.*, 70, *et seq.*
what gifts are to be deemed legacies, III. 11, 36—38.
not leasehold since Succession Duty Act, III. 50, 51.
donations *mortis causâ*, III. 12, 36, 37 n.
annuities, III. 12.
how the value to be calculated, III. 12—14.
on legacies to be enjoyed by persons in succession, III. 14—17.
on legacies in joint tenancy, III. 17.
plate, etc., settled as heirlooms, III. 17.
property not reduced into money, III. 20—22.
legacies subject to contingencies, III. 17.
legacies subject to power of appointment, III. 18, 42, 71, *et seq.*
personal estate directed to be applied in purchase of real, III. 19, 79.
estates *pur auter vie*, III. 20.
money left to pay duty not chargeable, III. 20.
money given by trust deed with power of revocation, III. 70. (*See*, too, III. 44.)
legacies under a testamentary appointment under a power, III. 71, *et seq.*
promissory note, with an engagement that it should not be demanded till after death, III. 70.
legacy charged on land by the execution of a power created by will, III. 74.
by the execution of a power created by deed, III. 74—75.
legacies out of real estate, III. 34, n., 75.
annuity out of, III. 78.
land directed to be sold, III. 75, 77.
legacies to be laid out in land, III. 79. (*See* III. 54.)
legacy consisting of forgiveness of debt, III. 79, 94.
a bequest in trust for creditors, III. 80.
legacy given to a charity, III. 80, 81. (*See* III. 49.)
not on legacies of books, prints, etc., to corporations, III. 82.
legacies of property in this country belonging to a foreigner, III. 83.
legacy of property situate out of Great Britain, III. 83—89.
legacy given up under doctrine of election, III. 75 n.
By whom the duties are payable, III. 90, *et seq.*
on legacies enjoyed by persons in succession, III. 14, 97 n.
by joint tenants, III. 17.
on legacies charged on real estate, III. 35, 90.
trustee paying duty, etc., may recover it, notwithstanding assignment of interest, III. 90.
question on the terms of the will, whether legatee is to have his legacy duty free, III. 90, *et seq.*

LEGACY DUTY.—*Continued.*
how paid, where estate insufficient, III. 91 n.
out of what funds the duty of a legacy duty free is to be paid, III. 97.
limitation of time in recovering against Crown, III. 98.

LEGAL EXPENSES,
what they include, II. 187 n.

LEGAL REPRESENTATIVES,
bequest to, II. 408, *et seq.*

LEGATEE. (*See* LEGACY.)
may be the writer of the will, I. 162—167, 413.
but a knowledge of the contents by the testator must be proved, I. 162, *et seq.*, 413.
legatee attorney, I. 162, *et seq.*
may call for proof in solemn form, I. 394, *et seq.* (*See* PROBATE, *manner of obtaining.*)
but must bring his legacy into court, I. 395.
his right to administration with the will annexed, I. 554, *et seq.* (*See* ADMINISTRATION.)
grant of limited administration to representative of, I. 598 n.
cannot dispute a will pronounced against, in a suit by next of kin against executor, I. 399.
nominee of legatees,
when to be admitted executor, I. 284.
who is capable of being, II. 269.
bankrupt, II. 270.
alien, II. 272.
subscribing witness disabled by 1 Vict. c. 26, s. 15... II. 274, 281 n.
so the wife or husband of, II. 274, 281.
construction of s. 15... II. 270—276, *in notis*, II. 276—281.
wife of testator, II. 276.
substituted for legatee dying before the legacy become vested, II. 386, 393—395, 416, *et seq.*, 499 n., 500—504, 708. (*See* LAPSED LEGACIES, CONDITIONAL LEGACIES.)
mode of description of, II. 339, *et seq.*, 432 n.
who entitled under that of,
"children," II. 340, 343 n., 359.
bequest to "A. and his children," II. 352.
"B. and his children in succession," II. 354 n.
"A.. and his first and other sons after him in the usual mode of succession," II. 354 n.
"A. and B. and their children," II. 355 n.
unmarried children, II. 590.
"younger children," II. 355, *et seq.*
when a younger child considered eldest and excluded, II. 355—358.
when an eldest considered a younger child and included, II. 357.
"posthumous child," II. 359.
"natural child," II. 364—370.
"grandchildren," II. 370.
"wife," II. 370—372, 433.
"nephews and nieces," II. 373—375.
"great nephews and nieces," II. 373.
"cousins," II. 375.
"heirs," II. 377.
"A. and the heirs of his body," II. 378.
"A. for life, and then to the heirs of his body," II. 378.
"heirs of A." or, "my heirs," II. 378—386.
"my heirs or next of kin," II. 385.
'issue," II. 386, *et seq.* (*See* ISSUE.)
"A. and his issue," II. 386.
"A. and B. and the issue of their bodies," II. 386, 387.
"A. and his issue as tenants in common," II. 387.
"issue" restricted to children, II. 389.
"descendants," II. 391.

LEGATEE.—*Continued.*
"eldest male lineal descendants," II. 392.
"male descendants," II. 392.
"A. *or* his heirs, *or* his children, *or* his descendants," II. 393, 394 n.
"relations by lineal descent," II. 393.
"relations," II. 395, *et seq.*
"poor relations," II. 396.
"near relations," II. 396.
"nearest relations," II. 397.
"relations of a particular name," II. 397.
whether distribution *per capita* or *per stirpes*, II. 395 n.
"next of kin," II. 398.
"who are kin," II. 399, *et seq.*
bequest to, after a previous bequest for life, II. 403.
"nearest of kin in the male line," II. 402.
"wife," II. 371, 400, 433.
"family," II. 404.
younger branches of, II. 407.
"executors and administrators," or "legal representatives," or "personal representatives," II. 408—421, III. 120.
"servants," II. 421.
"inhabitants," II. 423.
"government," II. 423.
direction that a fund shall be disposed of "in a due course of administration," II. 404.
mistakes in names or descriptions of legatees, II. 424.
in numbers of a class, II. 342 n., 434.
rectified by context, II. 425.
by parol evidence, II. 337 n., 426.
legacy to one in particular character, II. 431.
required to give security against contingent debts, II. 655. (*See*, II. 796 n.
onus of proof in case of doubt on representative of legatee to show that he survived testator, II. 497.

SPECIFIC. (*See* SPECIFIC LEGACY.)

RESIDUARY. (*See* RESIDUARY LEGATEE.)
his right to administration *cum testamento annexo*, I. 554., *et esq.*
cannot call on the general legatees to abate, II. 661. (But *see* II. 666 n.)
case where the assets have become insufficient, by a *devastavit*, II. 667.
what terms of bequest are sufficient to constitute, II. 801. *et seq.*
his rights generally, II. 803, *et seq.*
for life, II. 695, *et seq.* (*See* TENANT FOR LIFE.)
cases where legatees are regarded as purchasers, II. 669, *et seq.*
refusing to accept, legacy duty deducted, III. 23.
of legacy charged on realty may have a decree for administration of the personal estate without service on the rest, III. 627.
suing on behalf of himself and others, III. 613.
suit in County Court by, where estate does not exceed 500*l*.... III. 614, 668
may proceed by originating summons, III. 487.

LEGITIMATION,
per subsequens matrimonium, II. 370, 914 n., 921 n. (*See* DOMICIL, BASTARD.)

LETTERS,
injunction to restrain publication of testator's, III. 481.

LETTERS AD COLLIGENDUM.
granted while executor considers whether he will act or not, I. 324.
semble, are now obsolete, I. 324.
granted *ex officio*, I. 520.
grantée of, disposing of goods becomes *de son tort*, I. 302.

LIABILITY,
of executors, and administrators, III. 222, *et seq.* (*See* ACTION, EXECUTOR REMEDIES.)

LIBEL,
action for, does not at common law survive for executor, II. 4, 6, 26 n.
nor against him, III. 228.

LIEN,
of an attorney or solicitor, does not extend to his client's will, II. 375.
priority of, in administration of assets, II. 189.
executor is not deprived of, by payment into court, III. 596. (*See* II. 260.)
for unpaid purchase money, charge on land devised, III. 159, 265.
will pass by bequest of all "securities for money," II. 476.
preference of factor's, II. 212 n., 214 n.
preference of mechanic's, II. 212 n.
preference of miner's, II. 215 n.
vendor's, resident creditors preferred to, II. 225 n.
included in gift of property, II. 461 n.
effect of non presentment, II. 238 n., 239 n.
waiver of collateral security, II. 239 n., 252 n.
effect of collateral security on claim, II. 255 n.
enforcement in equity, III. 655 n.

LIFE ESTATE. (*See* ESTATE FOR LIFE.)

LIFE INSURANCE,
for benefit of wife and children goes to survivors, I. 794 n.
administrator *d. b. n.* may sue predecessor for, II. 160 n.
when representatives may recover, II. 22 n., 23 n.
collecting, must account, II. 23 n.
subject to debts, when, II. 23 n.
vests in husband of beneficiary when, II. 75 n.
included in what gifts, II. 461 n., 462 n.

LIGHTS,
action for obstructing, does not at common law survive to executor, II. 4.
nor against him, III. 228.
exception introduced by 3 & 4 Will. c. 42 . . . II. 7.
right of executor to mandatory injunction as to, II. 8 n., III. 481

LIGHTHOUSE,
lease of tolls of, held a chattel real, II. 37 n.
profit arising from tolls of, real estate, III. 77. (*See* II. 292 n.)

LIMITATION,
executor's title to chattels real by, I. 828. (And *see* I. 810, 811.)
choses in action by, II. 84.
of chattels and heir-looms, method of, I. 848, 849.
words of, or of purchase, I. 810—812, 828, II. 352 n., 386 n., 387, *ibid.*, n., 408—410. (*See* also SUBSTITUTED LEGATEE.)

LIMITATIONS,
statute of,
runs in favor of an executor who acts though he has not proved the will, I. 310 n. (*See* III. 634, *ibid.*, n.)
executor not bound to plead it, III. 225 n., 246 n., 328, 574 n.
until after decree for administration or its equivalent, III. 329, *ibid.*, n.
the residuary legatee may set up the statute in chambers, III. 329.
so may the *cestui que trustent* of devised estates against a creditor who has obtained an administration order, III. 329, 330.
after decree executor cannot give an acknowledgment to take debt out of, III. 329 n.
retainer of debt barred by, II. 266—268 n., 625 n.
contest of probate, I. 672 n., 674 n., 709 n.
application to establish will on behalf of a non-compos, I. 442 n.
presentment of claims, II. 232 n., 244 n.
citation to account, II. 161 n.

LIMITATIONS.—*Continued.*
barred debts, liability of surety for, I. 637 n.
legacy for, II. 669 n.
set off of, II. 620 n., III. 477 n.
payment of, II. 225 n., 246 n., III. 374 n.
bill by administrator *pend. lite* to save the statute, I. 593 n.
as to residuary legatee, giving statutory bond to pay debts, I. 627 n.
devastavit by neglect in executor enabling debtor to plead the statute, III. 331.
how executor should declare, if he means to rely on a promise to himself to bar the statute, III. 459.
against the Crown for recovery of legacy and succession duty, III. 98, 99.
Plea of the statute,
in actions *by* executors and administrators, III. 458.
for recovery of over payment to creditor, III. 375 n.
for death of testator, II. 32 n.
if the promises are laid *to the testator*, the time must be computed from the period when the action accrued, III. 458.
but where the cause of action accrues after his death, the statute, in an action by an administrator, runs only from the grant of the letters, III. 458.
statute barred by payment of interest on a note to an administrator who had taken letters in a wrong diocese, III. 460.
if the promises were laid *to the testator*, and the defendant pleaded the statute, the plaintiff could not reply a promise *to himself* within six years, III. 459.
nor could he give it in evidence, III. 459.
new action by executor where the testator brings an action and dies before judgment, the six years being then expired, III. 460, *et seq.*
within what time the executor must bring the new action, III. 461.
form of replying the new action, III. 462.
semble, remedy by fresh action not abolished, III. 461 n.
usual remedy now by proceeding under Order XVII. r. 4, III. 461 n.
if the executor brought an action and died, and the six years run, his executor might bring a new action within a year, III. 462.
the executor could not have a writ by journeys accounts, III. 460.
general statute extended by creditor's death, American statutes, III. 478 n.
in actions *against* executors and administrators, III. 524—531, 563 n., *et seq.*
former bar of statute by implied promise of executor, III. 524.
effect of 9 Geo. IV. c. 14 (Lord Tenterden's Act), III. 525.
from what time Statute of Limitations runs, III. 482, 525 n.
how liability may be kept alive, III. 525 n.
construction of 9 Geo. IV. c. 14, as to co-executors, III. 526.
amendment of by 19 & 20 Vict. c. 97, s. 14 (Mercantile Law Amendment Act), III. 526.
cases outside this Act, III. 528.
effect of this act, III. 527 n.
when writ of summons must be renewed to keep remedy alive, III. 530.
case where after cause of action accrued, debtor died and by reason of litigation as to right to probate, no executor was appointed till after six years, III. 529.
when the plaintiff might have had a writ by journeys accounts against the executor, and replied it to a plea of the statute, III. 530.
proceedings under Judicature Act to save the statute where defendant dies, III. 531.
51 & 52 Vict. c. 59 (Trustee Act, 1888), III. 530. (*See* III. 633.)
trustees and executors may plead statute, III. 530.
except where trustee party to fraud or action is to recover trust property in hands of trustee, III. 530.
American statutes, special limitation, III. 563 n.
stay of action, III. 565 n.
effect of presentment and allowance, III. 567 n.
special limitation superseded by statute of non-claim, III. 568 n.
dependent on notice of appointment, III. 568 n.

LIMITATIONS.—*Continued.*
not retrospective, III. 569 n.
what debts affected, III. 569 n., 570 n.
default of agent, III. 356 n.
action for devastavit, III. 356 n., 569 n.
on administration bond, I. 652 n., II. 181 n.
for legacy, III. 570 n.
for distributive share, III. 572 n.
available between co-executors, III. 570 n.
in favor of sureties, III. 573 n.
former administrator, III. 573 n.
heirs and devisees, III. 573 n.
executor *de son tort*, I. 317 n.
manner of pleading, III. 574 n.
waiver of statute, III. 573 n.
exceptions to statute,
for assets in hand, III. 575 n.
new assets, III. 575 n.
disability, III. 576 n.
non-residence, III. 576 n.
mistake, III. 576 n.
testamentary direction to pay, III. 577 n.
effect of admission, III. 576 n.
new promise, III. 576 n.
by co-executor, II. 154 n.
action brought, III. 578 n.
in suits in equity *by* executors and administrators, III. 482, 513 n.
the statute does not run against a judgment, III. 482.
an infant bound by executor's neglect, III. 482.
in suits in equity *against* executors and administrators, III. 627, *et seq.*, 659 n., 661 n.
in all *legal* demands the statute operates, III. 627.
if time once begun to run against a debt in debtor's lifetime, it does not cease during period between the death and time of appointment of personal representative, III. 634.
when the statute begins to run, in cases of fraud or mistake, III. 634.
runs in favor of an executor *de son tort*, III. 633.
whether a bill filed by a creditor for himself and others will bar the statute as to all, III. 634.
the statute does not run against a trust, III. 628, 632 n. (But *see* III. 630.)
a trust for payment of debts on *real* estate will bar the statute, III. 628, 629.
unless the debt was barred before testator's death, III. 628.
secus on personal, III. 628.
Real Property Limitation Act, 1874...III. 629, *et seq.*
no action to be brought to recover money charged on land or a legacy but within twelve years from right accruing, III. 628.
land not to be charged after twelve years even though secured by express trust, III. 630.
Act does not apply to intestacies which governed by 23 & 24 Vict. c. 38, III. 630 n.
Judicature Act, s. 25, construction of, III. 631.
when claims on a trust of land or rent deemed to accrue, III. 631.
what arrears of payments recoverable under 3 & 4 Wm. IV. c. 27, III. 631.
fund severed from general estate, construction of, 3 & 4 Wm. IV. c. 27, III. 632.
Trustee Act, 1888, extends benefit of statute to trustees, III. 632, 633.
statute can be set up by creditor against person whose claim is foundation of decree, III. 634.

LIMITED ADMINISTRATION. (*See* ADMINISTRATION.)
grant of, I. 577, *et seq.*
citation of parties entitled to general grant necessary before, I. 609, 610.

LIMITED EXECUTOR. (*See* EXECUTOR, *appointment of.*)
appointment of, I. 288. *et seq.*

LIMITED PROBATE,
grant of, I. 88, 463, 464.

"LINEN,"
what passes by bequest of, II. 490.

LIS PENDENS. (*See* ADMINISTRATION PENDENTE LITE.)
includes an appeal to House of Lords for purpose of administration, I. 588.

LITERARY PROPERTY,
executor's interest in, II. 40.

"LIVE AND DEAD STOCK,"
what passes by bequest of, II. 471 n.

LIVING PERSON,
place of deposit of wills of, I. 375, 376.
supposed to be dead, revocation of probate of will of, I. 692.
payment of money under probate of will of, void, III. 467.

LOAN SOCIETY,
when representation not necessary to member of, I. 551.

LOANS,
executor's authority to make, III. 364 n.
to co-executor, III. 395 n.
by one of several co-executors, II. 154 n.

LOCALITY,
goods described in will by reference to, II. 453, 460—464, 465, *et seq.*, 638, *et seq.*
of debts as assets, III. 135 n.
of moneys bequeathed for life with power of appointment, III. 135 n.

LOCKE KING'S ACT, III. 154, *et seq.*
construction of, III. 154—156, 155 n.
Amending Acts, III. 157—158, 264.
in New York, III. 186 n.

LOCO PARENTIS,
person standing in, definition of, II. 651.
legacy by person in, II. 651, *et seq.*, 742, 745, *et seq.*
presumption as to time of vesting of legacy by person in, II. 550 n.

LONDON,
city of,
freeman of, may devise lands within the city in mortmain, II. 298.
distribution under the custom of, abolished since December 31st, 1856... II. 929.

LOST NOTE,
negligence in collecting, III. 354 n.
liability of executor as maker, III. 133 n.

LOST PROBATE,
in case of, no fresh grant but exemplification, I. 466.

LOST WILL,
probate of, I. 207, 394 n., 456, 460 n.
established in chancery, I. 458 n., 462 n.
presumption as to intended destruction, I. 457 n., 458 n.
or revocation, I. 207 n.
revocation of former will by, I. 211 n., 214, 230 n., 458 n., 462 n.
proof of lost record of will, I. 466 n, 467 n.

LUNATIC. (*See* INSANITY, WEAKNESS, DELUSION.)
who is to be considered as such, I. 20, *et seq.*
onus of proof on party asserting the lunacy, I. 21.
will made by, I. 21.
does not become valid if testator recovers his mind, I. 21.
during lucid interval, I. 25—32.
transfer, in such case, of *onus probandi*, I. 26.
what is sufficient proof of lucid interval, I. 21—32.
act of making rational will, I. 32.
distinction between delirium and insanity, I. 33.
a will may be established, though all the attesting witnesses depose to testator's insanity, I. 43, 144, 407—410.
a will is not revoked by subsequent insanity, I. 21 n.
incapacity of, to be executor, I. 276.
grant of administration to another, when executor becomes lunatic, I. 277, 581.
incapacity to be administrator, I. 276, 537.
revocation of grant to administrator if he becomes *non compos*, I. 687.
instance of grant not being revoked in such case, I. 581.
where next of kin, his next of kin must be cited by person seeking administration, I. 523 n.
conversion of property by committee of, I. 791. (*See* also I. 757, II. 632 n.)
ademption of specific legacy given by will of, by sale under order in lunacy, II. 632 n.
sale or mortgage of property of, under 53 Vict. c. 5, ...I. 792.
unapplied property of, not converted as between real and personal representative, I. 792.
compulsory sale of land of, under Lands Clauses Act, I. 792.
transfer of stock standing in name of, when trustee or executor, 13 & 14 Vict. c. 60, III. 598.

MAINTENANCE. (*See* INFANT.)
effect of, gift of, as to vesting a legacy, II. 530, *et seq.*, 546, *et seq.* (*See* LAPSED LEGACIES.)
general legacies abate before, II. 672 n.
repayment of advances for, II. 693 n.
gift of, when held to determine with minority, II, 601 n.
when executor may allow, out of legacy to an infant, II. 720.
not generally out of capital, II. 720, 729.
out of income under Conveyancing Act, 1881...II. 722.
construction of Act, II. 722 n., 723.
may be given in certain cases though capital not vested, II. 721, 722, 723.
out of income apart from statute, II. 723, *et seq.*
generally gift must be vested, II. 723.
exceptions (1) where testator parent, or *in loco parentis*, II. 725
(2) where gift to class, II. 725.
method of providing by insurance, II. 726.
generally not allowed where father alive, II. 727.
exceptions, II. 727 n.
amount allowed, II. 728.
allowance for past maintenance, II. 728.
mode of application for, II. 730.
interest by way of, on legacies given by testator who is a parent or *in loco parentis*, II. 742, *et seq.*, 745.
whether legacies vested or contingent, II. 745.
where infant dies under age who entitled to interest, II. 747.
executor not allowed to show disbursements for maintenance of testator's children under plea of *plene administravit*, III. 542 n.

MALICIOUS PROSECUTION,
when action survives, II. 26 n.

MALPRACTICE,
when action survives, II. 26 n.

MANDAMUS,
to compel probate no longer lies, I. 467.
did not lie formerly to compel grant to residuary legatee, I. 556.

MANURE,
when it passes to executor, I. 853, 868 n.

MARINE. (*See* SEAMEN.)

"MARINER OR SEAMAN,"
meaning of, in Statute of Frauds and Wills Act, I. 172.

MARKSMAN,
signature of will by, I. 103—105.
proof of execution of will by, I. 20, 414.
attestation of will by, I. 134.

MARRIAGE. (*See* HUSBAND AND WIFE.)
revokes will, I. 231, *et seq.*, 236—238.
revokes letters, I. 694 n.
joins husband as co-administrator, II. 114 n.
bequests with conditions in restraint of, II. 587, *et seq.* (*See* CONDITIONAL LEGACIES.)
action for breach of promise of, will not survive to executor, II. 14, 26 n.
nor against executor, II. 14 n., III. 225 n.
where voidable, husband entitled to administer to wife, I. 491.
secus where void, I. 491.
not a valuable consideration for purpose of Succession Duty, III. 49 n.
when it severs a joint tenancy, II. 72, 821, 822 n.

MARRIAGE SETTLEMENT. (*See* SETTLEMENT.)

MARITAL RIGHT. (*See* HUSBAND AND WIFE, *Jus Mariti.*)

MARRIED WOMAN. (*See* HUSBAND AND WIFE.)

MARRIED WOMEN'S PROPERTY ACT, 1882. (*See* HUSBAND AND WIFE; and STATUTE INDEX.)
construction of and decisions on, I. 87—89, 248 n., 273, 820, *et seq.*, 869, *et seq.*, II. 54, *et seq.*, 163, 731, III. 128 n., 274.

MARSHALLING ASSETS,
doctrine of, III. 209, *et seq.* (*See* ASSETS.)
procedure in equity, III. 505 n.

MASTER AND SERVANT,
action for death of servant, II. 31 n.

MATERIALS,
found by executor as such, he may declare for, II. 79. (*See* III. 101 n., 452, 453.)

MAXIMS,
Actio personalis moritur cum persona, II. 4, *et seq.*, III. 228, 240, 452, 481.
Ambiguitas verborum latens verificatione suppletur, II. 429. (*See* II. 374 n.)
Expressio unius est exclusio alterius, II. 484 n.
Falsa Demonstratio non nocet, II. 426 n.
Jus accrescendi inter mercatores locum non habet, I. 776, II. 47, *et seq.*, III. 243 n.
Mobilia sequuntur personam. I. 436, III. 120.
Omnia praesumuntur rite esse acta, I. 145.
Partus sequitur ventrem, I. 811 n.
Quicquid plantatur solo solo cedit, I. 851, *et seq.*
Veritas nominis tollit errorem descriptionis, II. 426.

"MEDALS,"
what passes by the bequest of, II. 490.

MEMORANDUM,
referred to in will, probated, I. 471 n

MEMORY,
sufficient to make will, I. 24 n.
failure of, must be total, I. 24 n., 27 n.
from old age, I. 47 n.
forgetfulness, I. 25 n.
sound, defined, I. 25 n.

MERGER,
of the estate of an executor in his estate *proprio jure*, I. 768, 769.
time when executor ceases to hold as such, I. 771, *et seq.*
legal where no equitable abolished by Judicature Act, I. 769.
when a mortgage merges, I. 816, 817. (*See* also I. 749, 750, and MORTGAGE.)

MESNE PROFITS,
action for,
cannot be maintained against an executor, II. 24 n., III. 231.
he is liable for use and occupation up to the day of the demise in ejectment, III. 231.
but not after, III. 231.
relief in equity, III. 232.

"MILITARY SERVICE,"
meaning of in Statute of Frauds and Wills Act, I. 171.

MINOR. (*See* INFANT.)
distinction between, and infant, I. 579.

MISAPPROPRIATION. (*See* DEVASTAVIT, III. 377 n.)

MIS-DESCRIPTION. (*See* CONSTRUCTION.)
of property in will, I. 261 n., II. 328, *et seq.*, 490, *et seq.*, 641, 764.
of persons, I. 456, II. 340, *et seq.*, 367 n., 424—435.

MISNOMER. (*See* CONSTRUCTION.)
of legatee, II. 321 n., 424, *et seq.*, 424 n.—432 n.

MISTAKE,
will cancelled by, I. 203, 204, 229 n., 251 n.
will revoked under mistaken notion of facts, I. 221, *et seq.* (*See* WILL, *Revocation of.*)
will made under erroneous belief on the part of the testator, I. 220, 221 n.
erroneous recital in will, how far binding, II. 337, 493, 494, 619.
mistakes in wills, how to be corrected, II. 337, 424, *et seq.*, 492 n.
by bill in equity, III. 657 n.
omission by in a will cannot be supplied by Court of Probate I. 421.
insertion by, in a will, may be corrected in the Court of Probate, I. 422 n., 454. (*See* PROBATE, *manner of obtaining.*)
of word may be corrected by Court of Probate, I. 423 n.
in the name of executor, probate granted in right name, I. 455, 456.
in the names of descriptions of legatees, II. 424, *et seq.* (*See* LEGATEE.)
in the description of a legacy, II. 490, *et seq.*

MIXED FUND,
of realty and personalty, rules of construction applicable to, II. 554 n., 557. (*See* II. 723 n.)
how liabilities apportioned, III. 165.

MODERATION OF COSTS,
of solicitor employed by executor, III. 433, 644.

MONEY,
when considered as land in equity, I. 783, *et seq.* (*See* CONVERSION.)
legacy of, when deemed specific, II. 440—442.

MONEY.—*Continued.*
when it passes in gift of "property," II. 460 n., 462 n.
with desk bequeathed, II. 468 n.
what passes by description of, in a will, II, 466, 472—475.
"sums of money," II. 475 n.
money in the funds, II. 475.
"securities for money," II. 476.
of testator in hands of executor,
when the property is altered, I. 777, *et seq.*
when it passes to assignees of bankrupt executor, I. 766.
cannot be taken in execution *de bonis testatoris*, I. 772.
but *semble*, since Judicature Act, creditor entitled to judgment to extent of, I. 772 n.

MONEY HAD AND RECEIVED,
action for,
lies *for* executor, if goods are taken from testator, and sold, II. 3.
executor may sue, as such, for money had and received to his use as executor, II. 79. (*See* III. 452, 453.)
lies *against* executor, if goods taken by testator have been sold, III. 229.,
executor cannot be sued, as executor, for money had and received by him, III. 291.

MONEY LENT,
executor may sue for, as executor, II. 79. (*See* III. 452, 453.)
he cannot be sued for, as executor, III. 290.

MONEY PAID,
action for,
executor may sue, as such, for money paid by him as executor, II. 79.
he may be sued, as such, for money paid to his use, III. 289

MONOMANIA,
invalidates will when, I. 34 n., 36 n
defined, I. 36 n.

MONUMENTS. (*See* TOMBSTONE.)
when heir-looms, I. 846.
bequest to erect within a church, a charitable use, II. 306, 309 n.
without a church, a void perpetuity, II. 306 n., 309.

MORTGAGE,
considered part of the personal estate, I. 815, 818 n., III. 139 n.
in what case heir entitled, I. 816, 818 n.
assignment by executor, II. 132 n., 627 n.
by one of several executors, II. 153 n.
by foreign executor, I. 430 n., 433 n., 436 n.
presentment as a claim, II. 237 n., *et seq.*
foreclosure by executor, II. 243 n., 252 n.
surplus moneys, I. 819 n.
title bought in, I. 818 n., II. 139 n.
made to executor, passes to his personal representative, I. 796 n.
in hands of executor, II. 627 n.
of *legatee* for life, II. 700 n., 706 n.
interest in land within Mortmain Acts, II. 291, 294.
not where of a whole undertaking, II. 292 n., 295.
when it passes by bequest of securities for money, II. 472 n., 476—478.
when it merges, I. 816. (*See* also *Swabey* v. *Swabey*, 15 Sim. 106, I. 750.)
title of executor of mortgagor, in case of a mortgage, with power of sale, I. 817.
of chattel real, right of redemption in executor, I. 828.
effect of husband mortgaging his wife's chattel real, I. 824. (*See* I. 820, and HUSBAND AND WIFE.)
of the assets by executor, valid, II. 121, 138 n. (*See* EXECUTOR, *power of.*)
exception where mortgagee has notice of improper purpose, II. 122, 122 n.
whether legal estate of mortgaged lands will pass by the words "securities for money," II. 477.

MORTGAGE.—*Continued.*
equity of redemption,
whether legal or equitable assets, III. 126.
right to be exonerated by the executor, III. 154, 185 n. (*See* EXONERATION.)
executor cannot invest money in, after a decree to account, III. 335.
liability of executor for investment on, III. 334, 335 n., 368 n.
how it may be a subject of *donatio mortis causâ*, I. 892, 897 n.
marshalling assets with respect to, III. 210. (*See* ASSETS.)
to two persons jointly, no survivorship as to mortgage money, I. 776.

MORTGAGEE. (*See* MORTGAGE.)
not bound to see to application of mortgage money where executor with charge of debts mortgages, I. 781 n.
when his right against personal estate will not be enforced, II. 797 n.
when liable for succession duty, III. 48.
acknowledgment by one of two joint does not enable mortgagor to redeem after his right is barred by Statute of Limitations, III. 527 n.
obtaining order for sale in administration action not entitled to costs before personal representatives, III. 639 n.

MORTMAIN. (*See* CHARITABLE USES.)
Acts, II. 285, *et seq.*

MOTHER,
right of, to grant of administration, I. 500.
to distributive share, II. 901, 909 n.
when brothers and sisters shall share with, II. 901.
representatives of brothers and sisters, II. 902.
when she shall take the whole intestate's effects, II. 903.
advancement from, to a child, shall not be brought into hotchpot, II. 880.

MOTHER-IN-LAW,
has no claim under Statute of Distributions, II. 904.

MOURNING,
legacies for, not preferred to other general legacies, II. 672.
included in funeral expenses, when, II. 170 n.
for widow and family of testator, cannot be claimed against the estate of the executor, II. 168 n.

"MOVABLES,"
include what, II. 469 n.

MUNICIPAL CORPORATIONS,
action against, for causing death, II. 28 n., 31 n.
survival of actions against, II. 100 n.
when foreign, can take devise, II. 271 n., 275 n., 276 n.
may take gifts for what objects, II. 274 n.—276 n.
gifts to, for public improvements, charities, II. 307 n.

MUSEUM,
devise for exempt from Mortmain Act, II 290.

MUTILATION. (*See* WILL, *revocation of, Alterations.*)
of will,
presumption as to, I. 186, 206.

MUTUAL WILLS,
unknown to the testamentary law of this country, I. 9. (*See* I. 175 n., 177 n.)
whether enforceable in equity as a compact, I. 174, 175, *et seq.*
whether ever irrevocable in equity, I. 174, *et seq.*
of two sisters, will of one not revoked by the marriage of the other, I. 236.

NATURALIZATION ACT,
33 & 34 Vict. c. 14 . . . , I. 13, 270. (*See* ALIEN.)

NAVAL ASSETS. (*See* SEAMEN.)
definition of, I. 475.

NAVIGATION SHARES,
whether real or personal property, II. 36.

"NEAREST OF KIN IN THE MALE LINE,"
who takes under description of, II. 402.

NECKLACES,
what passes by bequest of, II. 488.

NE EXEAT REGNO,
writ of,
what it is, III. 635.
quære, whether not abolished by Debtors Act, III. 635, 637.
may be had concurrently with bail at law, III. 635.
affidavit to obtain, III. 636 ibid n.
will not go against a *feme covert* executrix or administratrix, III. 635, 636.

NEGLIGENCE,
action for, does not survive for executor, where personal injury alone caused, II. 4, 8, 9, 20 n., 100 n.
statutory exceptions to rule, II. 9—12.
when against him, III. 223.

NEPHEWS AND NIECES,
who can take under description of in a will, II. 373, *et seq.*
not included in "nearest relations," II. 395 n.
their degree as next of kin, I. 502, II. 905, 912 n.
they shall share, in distribution, with uncles and aunts, II. 905.
when they shall share with their grandmother, II. 902.
when they shall take *per capita*, and when *per stirpes*, II. 907, 907 n.

NE UNQUES EXECUTOR,
plea of,
when necessary, III. 522, 523, 561 n.
a plea in bar, III. 523, 561 n.
a plea that defendant is administrator and not executor, and the converse, was in abatement, III. 523.
abatement easily remedied under Judicature Act, III. 523.
evidence on issue joined on, III. 524.

NEXT OF KIN. (*See* DISTRIBUTION.)
their right to call on the executor to prove the will in solemn form, I. 394.
when liable to costs, I. 399, 401.
when will has been pronounced against in suit between next of kin and executor, it cannot be set up again by a legatee, I. 399.
their right to administration, I. 496, *et seq.*, 556, 557. (*See* ADMINISTRATION.)
concluded by renunciation, I. 709 n.
by judgment of Probate Court, I. 677 n.
excluded from administration when they have no interest, I. 512, 513, 557.
dying before administration granted, representative entitled to, I. 513.
but payment to, no answer to action by his representative as administrator to original intestate, I. 514.
when of unsound mind his next of kin must be cited by person seeking administration, I. 523 n.
right to administration, *cum testamento annexo*, next after residuary legatee, I. 554, *et seq.*, 562 n.
right to administration *de bonis non*, I. 570—572.
preference of, as administrator *durante minoritate*, I. 580.
cannot be compelled to take out administration, although they may have administered, I. 513.
when administration granted to attorney of, I. 514.
who are next of kin, I. 497, II. 398, *et seq.* (*See* II. 411, *et seq.*)
definition of consanguinity, I. 497.
lineal, I. 497.

NEXT OF KIN.—*Continued.*
collateral, I. 497—501.
mode of calculating degrees, I. 498—501
rights of ascendants, I. 500.
of the father, I. 500.
of the mother, I. 500.
grandfather preferred to uncle, I. 500.
children preferred to parents, I. 501.
brother preferred to grandfather, I. 501.
their rights under the Statute of Distributions, II. 901, *et seq.* (*See* DISTRIBUTION.)
they are entitled to the residue undisposed of, notwithstanding a contrary declaration in the will, II. 838.
their claim against executor may be barred under 22 & 23 Vict. c. 35. . . II. 657 n.
description of, in a will, II. 398, *et seq.* (*See* II. 402, *et seq.*)
as "heirs," II. 380 n., 381 n., 385 n., 433 n.
"relations," II. 395 n.
"representatives," II. 411 n.
"according to the statute," II. 399 n.
"legatees agreeably to law," II. 432 n.
husband or wife not included, II. 399 n.
next of kin of two persons, II. 399 n.
who are kin, II. 398—402.
in the male line, II. 402.
next of kin, apart from the Statute, II. 398 n., 402, 415.
means next of kin at the death of him whose next of kin are spoken of, II., 341 n., 350 n., 402.
bequests to, after a previous bequest for life, II. 403.
may be bound, though absent, after representation order in administration action, III. 625, 626.
may have an order for administration without serving others interested, III. 627.
may proceed by originating summons, III. 487.
suit in county court by, where estate does not exceed 500*l.*, III. 668.
suits in United States by, II. 28 n., III. 471 n.

"NEXT SURVIVING SON,"
may be construed "next younger surviving son," II. 336.

NICKNAME,
description of legatee, by, II. 430.

NON COMPOS MENTIS,
disqualified for administration, I. 527 n., 540 n.
payment of legacy to, II. 716 n.

NOTICE,
of probate, I. 385 n.
to give jurisdiction, I. 389 n.
to creditors to present claims, II. 231.
of rejection of claim, II. 248 n.
payment of inferior debts by executor, without notice of superior, II. 229, *et seq.*
suffering judgment on inferior debt, II. 229.
what is sufficient notice, II. 230,
whether one executor affected by notice to co-executor, III. 351.
payment of legacy without notice of debts, II. 656, *et seq.*
protection of executor by 22 & 23 Vict. c. 35, s. 29 . . . II. 657, III. 501.
of intention to raise Statute of Frauds on originating summons should be given, III. 613.

"NOW,"
word in wills, I. 260 n., II. 763

NULLITY OF MARRIAGE,
if sentence of, not pronounced, husband entitled to administer to wife, I. 491.

NUMBER,
misstatement as to, of objects of gift, II. 342 n., 434.

NUNC PRO TUNC,
entry of judment, II. 95.

NUNCUPATIVE WILL,
definition of, I. 168.
derivation of, I. 168 n.
invalid if made on or after January 1, 1838...I. 170.
except of soldiers and seamen, I. 170.
construction of this exception, I. 171.
minors within exception may make, I. 172.
presumptions in case of alterations in, I. 188 n.
In the United States:
to be in writing, by statute, I. 94 n., 116 n.
method of making, I. 168 n.
witnesses to, I. 168 n., 372 n., II. 381 n.
carries real estate, when, I. 168 n., 169 n., 170 n.
unexecuted written will as, I. 169 n., 170 n.
only when testator *in extremis*, I, 169 n., 170 n.
at sea, I. 171 n., 172 n.
not revoked by written will, I. 185 n.
revokes written will, when, I. 185 n., 191 n.
proved within six months, I. 380 n.
in solemn form, I. 394 n.

NURSERY GROUNDS,
trees, etc., planted in, for sale, removable by executors, I. 836, 837, n.

OATH,
executor's oath,
on application for probate, I. 723.
on renunciation, I. 332.
that he will exhibit an inventory and account when called upon, III. 662.

OBLITERATION. (*See* ALTERATIONS, CONSTRUCTION.)
of will, I. 184, 186 n., 195, *et seq.* (*See* WILL, *revocation of.*)
cannot change life estate into fee, I. 162 n.

OCCUPATION RENT,
executors chargeable with, II. 125 n.

OFFICE,
persons not qualifying for, formerly disabled to be executors, I. 276 n.
grant of, for years, assets in hands of executor of grantee, III. 118.

OFFICE COPY,
of will is good evidence of executor's title, I. 688, III. 465.

OFFICER,
on service, will of, I. 169. (*See* NUNCUPATIVE WILL, SOLDIER.)

OFFICIAL MISCONDUCT,
when action survives, II. 27 n.

OFFSPRING,
meaning of word, II. 389 n.

OLD AGE,
will made by persons, who by old age have lost their reason, I. 44.
of itself, no ground of incapacity, I. 144.

OMISSIONS. (*See* EVIDENCE.)
in will cannot be supplied by the Probate Court, I. 421.
may be supplied by Court of Construction, II. 332 n., 334, 429, 430.
court may make, in probate of words inserted by fraud or mistake, I. 422 n., 454.
may be made by Court of Construction, II. 334.

ONEROUS BEQUEST,
coupled with beneficial, when legatee can disclaim, II. 771.

ONLY CHILD,
when considered "a younger child," II. 357.
rights of, under the Statute of Distributions, II. 877.

ONUS PROBANDI. (*See* EVIDENCE, WITNESSES.)

OPINIONS,
of subscribing witness as to sanity, I. 406 n., 415 n.
of non experts of testators capacity, I. 406 n.. 407 n., 410 n.
of experts on non observed facts, I. 408 n. 409 n.
of witnesses as to what matters, I. 408 n., 409 n.
as to mental condition during last illness, I. 411 n.

OPTION,
of archbishops, I. 809. (*See* ARCHBISHOP.)
to purchase when it passes to executor, I. 778, 809 n.
to purchase executor cannot give to sub-lessee, II. 125.

"OR,"
the word construed "and," and *vice versâ*, I. 282 n., II. 335 nn., 395 n. (*See* II. 393.)

ORDERS,
of Probate Division, I. 384, 541.
of Supreme Court and Rules. (*See* INDEX OF ORDERS AND RULES.)

ORDINARY. (*See* BISHOP.)
his power of granting probate and administration before stat. 20 & 21 Vict. c. 77...I. 337, 489.

ORIGINAL WILL,
deposit of, I. 375, 378.
production of how procured, I. 377, 466 n., 469.
when delivered out of registry, I. 377, 466 n.
costs of production of, I. 668.
when it may be examined in correction of probate, I. 668—671. II. 429 n.

ORIGINATING SUMMONS,
proceedings by, by executor, III. 486, *et seq.*
difference between and proceedings by writ, III. 486.
why preferable to writ, III. 487.
costs of proceedings wrongly commenced, III. 486.
cannot be served out of the jurisdiction, III. 487 n.
how to be entitled, III. 487.
questions that can be decided on, III. 488, 612.
administration may be ordered on, III. 489. (*See* ADMINISTRATION ACTION.)
what persons must be served with, III. 489, 490.
court may add any parties, III. 489.
when application for payment out of court may be made by, III. 596.
when administration can be obtained on, III. 612.
not before probate, III. 612.
annuitant not in arrear cannot get, III. 612.
disputed debt cannot be determined on, III. 613.
notice of intention to raise Statute of Frauds, III. 613.
where it takes place of administration order under old practice executor can be compelled to plead Statute of Limitations, III. 329 n.
appointment of new trustee and vesting order made on, III. 600.
proper mode of application for maintenance for infant, II. 730.

ORNAMENTS,
"personal ornaments," what passes by bequest of, II. 489.

ORPHANS,
court of, in London,
bond to chamberlain shall pass to his successor, II. 47.
portion of orphan of the chamber of London, II. 59.

OTTOMAN EMPIRE. (*See* DOMICIL.)
will of British subject domiciled in, I. 441.

OUTLAW. (*See* WILL, *who is capable of making.*)
incapable of making a will of personalty as long as outlawry exists, I. 92 n.
might in some cases make executors, I. 92.
formerly outlaw in a personal action might sue as executor, I. 273 n.
incapable of being administrator, I. 537.
outlawry now abolished in civil proceedings, I. 92 n.

OVERSEER,
office of, I. 283.
distinguished from that of executor, I. 283 n.
of the poor, money due from, in what order to be paid by his executor, II. 191.

OYER,
of letters testamentary abolished by C. L. P. Act, III. 453.

OYSTERS,
action for removal of, I. 832 n.

PAID,
the word construed "payable" or "vested," II. 335.

PAPERS,
general rule as to production of by executor in a suit, III. 597.
right of executor to deceased's, II. 115 n.

PAPIST. (*See* ROMAN CATHOLIC.)

PARAPHERNALIA. (*See* HUSBAND AND WIFE.)
what are so considered, I. 880—882.
the wife cannot dispose of them during her husband's life, I. 882.
secus of jewels given to her separate use by third persons, I. 885.
the husband may sell or give them away, I. 883.
he cannot devise them, I. 883.
they are subject to the husband's debts, I. 883. (*See* III. 149, 215.)
but not to his legacies, I. 883.
widow's right to marshal the assets against the heir, I. 884, III. 215.
against a devisee, I. 884, III. 215.
right of heir or devisee to be exonerated out of, III. 149.
if the husband pawn, the executor must redeem them for the widow, I. 884.
widow may be barred of them by marriage articles, I. 885.
by election to take them as legatee, I. 885.
jewels, etc., given to the separate use of the wife by third persons, I. 885.
by the husband before marriage, I. 886.
effect of Married Women's Property Act, I. 886.

PARENTS,
right of, to administration of their children's effects, I. 500.
to a distributive share, II. 901, *et seq.*
person "*in loco parentis*," definition of, II. 651.
gift to and children how they take, II. 393. (*See* II. 355 n.)

PARK,
public, devise for exempt from Mortmain Act, II. 290.

PAROL EVIDENCE, I. 209, 417—427, 456—461, II. 426—430. (*See* EVIDENCE.)
as to different objects partially described, II. 490 n.
to identify objects bequeathed, II. 491 n.
of scrivener, of omission, II. 491 n.
of intent, II. 619 n.
of omission of child, II. 492 n.
inadmissible, if no ambiguity, II. 492 n.
to fill blank, II. 492 n.
to supply omissions in bond, I. 628 n.
to show testator did not know of property, II. 492 n.
as to miscalculation in will, II. 493 n.
to show deduction of book charge, II. 645 n.
intent to make advancement, II. 649 n., 650 n.

PARS RATIONABILIS,
doctrine of, I. 2, 243 n., 480.

PART,
gift of any, legatee may take all, II. 766.
definite, of larger quantity legatee may select, II. 766.
of will may be probated, I. 354 n.

PARTIES. (*See* EXECUTION, JUDGMENT, REVIVOR.)
to actions *by* executors,
if there are several executors, they must all join, II. 150, III. 450, 473 n.
though some are within seventeen years, III. 451.
or have not proved, III. 451. (But *see* II. 150.)
but not if they have renounced, stat. 20 & 21 Vict. c. 77, s. 79... II. 150, III. 451.
absconding executor not a necessary party, III. 451.
if one alone sell the assets, he may sue alone for the price, II. 451, 452.
when he *must* sue alone, III. 452.
so if goods be taken out of the possession of one of several, III. 452.
two out of three executors may recover in ejectment, III. 452.
the objection formerly made by a plea in abatement, III. 451.
procedure under Judicature Act by adding parties, III. 451.
one executor of several who refuses to sue may be made defendant, II. 150 n., III. 451 n.
if two have the legal interest in a contract, the executor of one cannot be joined as a party with the survivor, III. 448, 449.
if both are dead, the executor of the survivor must sue alone, III. 449.
so as to remedies in form, *ex delicto*, III. 450.
to suits in equity *by* executors,
if there are several, they must all sue, III. 485, 512 n.
but where one alone has proved, he may sue alone, III. 485.
one executor of several who refuses to sue may be made defendant, III. 485. (*See* II. 150 n., III. 451 n.)
executor may obtain a decree against a single legatee, etc., for administration of the estate or execution of the trusts, III. 486.
what parties must be served on originating summons, III. 489.
court may add parties, III. 489, 490.
application in chambers as to parties to be served, III. 490.
to actions *against* executors,
if there are several, those only who have administered, need be sued, III. 519, 559 n.
in an action against a wife executrix, the husband may be joined, III. 520.
executor should be named as such, III. 521.
may be sued personally and in representative capacity in same action, III. 521.
if one of two executors die, the action must be against the survivor alone, III. 520.
to suits in equity *against* executors, etc., III. 589—591, 658 n.
if there are several they must be all sued, III. 589.
at least such as have acted, III. 590.
when *cestuis que trustent* are necessary parties, III. 590.
defendant dying pending action, III. 590.

PARTIES.—*Continued.*
application of maxim *actio personalis etc.*, III. 590.
where no legal personal representative Court may appoint or dispense with, III. 591.
cases to which rule does not apply, III. 591.
sole plaintiff dying insolvent, III. 591.
executor returning must be made party in suit against administrator *durante absentia*, I. 598.
when an executor *durante minoritate* must be joined, III. 620.
in what cases the personal representative must be made a party, III. 620.
estate cannot be administered in the absence of a personal representative, III. 619.
when representative of deceased executor necessary party, III. 620, 621.
executor appointed by foreign court not sufficient for general administration, III. 621.
nor executor *de son tort*, III. 514 n., 621.
nor administrator *ad litem*, III. 621.
court may in certain cases appoint representatives, III. 625—627.
representation order, III. 626.
who may be made co-defendants with executors, III. 622, 624.
persons wrongfully taking property of deceased, III. 623.
surviving partners, III. 623, 624.
death of one, when the cause of action survives, action does not abate, II. 91, III. 624. (*See* III. 240, 485.)
joinder of heirs :
in proceedings for probate, I. 388 n., 392 n.
to contest will, I. 397 n.
for payment of purchase money to deceased vendor's estate, II. 25 n.
(*See* HEIRS AND DEVISEES.)
joinder of sureties :
in action on administration bond, I. 648 n., 650 n.
in proceeding for balance of predecessor's account, I. 635 n.

PARTNERS. (*See* TRADE.)
partnership firm may be executors, I. 270. (*See* II. 834.)
survivorship as to their joint property, I. 775. (*See* I. 793 n., III. 103 n.)
whether goodwill survives, II. 181 n., III. 103 n.
joint choses in action, II. 47.
the *remedy* survives, II. 48, III. 449.
when surviving partners of deceased may be joined in action against his executor, III. 623, 624.
liability of executor of, in equity, III. 243, *et seq.*
provisions of Partnership Act, 1890... III. 245, 248, 248 n.
liability of executor of deceased partner continuing his share in the trade, III. 398 *et seq.*
after what lapse of time partnership account will be decreed, III. 628 n.
proper mode of taking partnership accounts in case of bankers as between deceased and surviving partners, I. 777 n.
when surviving partners may be sued with executor of deceased, III. 623, 624.
when the Statute of Limitations can be set up as a bar against the assets of a deceased partner in respect of a partnership demand, III. 628 n.
partnership dissolved by death, III. 103 n.
rights of executor of one of several partners, I. 777.
executors cannot be compelled to continue, III. 305.
ademption of specific legacy of partnership share, II. 638.
capital and income how distinguished as between tenant for life and remainderman, II. 698 n.
money admitted by executor to be in hands of his partner is considered as in his own, III. 594.
(*See* GOODWILL.)
liability for partnerships debts, III. 285 n.
of survivor, I. 713.
administration of firm business by survivor, I. 793 n., III. 131 n., 316 n.
by executor of deceased partner, III. 131 n.

PARTNERS.—*Continued.*
action by or against surviving partner, II. 53 n.
presentment, II. 236 n.
statute of Limitations, III. 569 n., 574 n.
compensation of surviving partner, III. 317 n.
continuation of business of deceased partner, III. 317 n.
individual and partnership creditors, I. 793 n., II. 215 n.
inventory of firm assets, II. 183 n.

PARTY WALL,
liability of executor to contribute to, III. 264.

PATENT,
executor may assign before probate, I. 364 n.
executor's interest in, II. 40, 53 n.
may be applied for within six months by legal representative of inventor, II. 40 n.
suit for infringement of, II. 53 n.

PAUPERIS FORMA,
executor cannot sue or defend in, III. 486.

PAWN,
goods of testator in, executor may redeem, II. 84, 85 n.
at what time, etc., II. 84.
when redeemed, they are assets, III. 104, 105.
goods specifically bequeathed are not adeemed by pawning, II. 654.
the executor must redeem them for the legatee, III. 267. (*See* SPECIFIC LEGACY.)
if the husband pawn the wife's paraphernalia, the executor must redeem them for her, I. 884.

PAYABLE,
the word construed to refer to majority or marriage of legatee, II. 584.
read "vested," II. 336. 516, 524, 584.

PAYMENT OF DEBTS BY EXECUTOR, II. 186, *et seq.* ((*See* DEBTS.)

PAYMENT OF LEGACIES. (*See* REMEDIES, RETAINER.)
all debts must be paid before, II. 653, III. 215—217 n.
the executor has no power of preference in respect of his own legacy, II. 661.
or of interest on legacies whether an admission of assets, III. 603, 604.
at what time legacies are to be paid, II. 690 *et seq.*
generally at the end of a year after testator's death, II. 690, 691 n. (*See* II. 695. *et seq.*)
practice in an administration suit, II. 693.
made payable "forthwith," II. 710 n.
at the age of 21, II. 709 n., 716 n., 720 n., 724 n.
after certain period or death, II. 709 n.
after certain event or death, II. 710 n.
payment before required time, II. 692 n.
for maintenance, II. 682 n., 693 n.
on evidence of solvency of estate, II. 692.
legacy to *A.* at twenty-one, and if he dies before, to *B.*, II. 691.
legacy subject to divesting contingency, II. 693.
a legacy of a defined fund vested absolutely is payable at twenty-one notwithstanding payment is further postponed by the will, II. 708.
annuity, II. 694, 695 n.
distinction between annuity and legacy for life with respect to payment of interest, II. 662 n., 695.
bequest of personalty for life, remainder over, II. 695—708.
a person taking the residue for life is entitled to the proceeds from the death of testator, II. 695, 696 n.
where testator has directed the residue to be invested in specified securities, II. 695, 716 n.
where the gift is of things *quæ ipso usu consumuntur*, II. 707.

PAYMENT OF LEGACIES.—*Continued.*
duty of executor to convert the property into trust securities, II. 699—705. (*See* CONVERSION.)
consequence of neglecting to do so, III. 342.
inventory by legatee for life, II. 704.
legacy to an infant, II. 708.
stat. 36 Geo. III. c. 25, s. 32...II. 719.
when legatee dies under twenty-one, II. 708.
legacies in stock,
at what time to be invested, II. 711.
appropriation of legacies payable *in futuro*, II. 711, *et seq.* (*See* APPROPRIATION.)
to whom legacies are to be paid, II. 716, *et seq.*
legacy to *A.* and his family, II. 717.
legacy to *A.* or her children, II. 716 n.
infant legatee, II. 716—726.
general rule that payment to the father, or any other person, is bad, II. 717, 720 n.
ratification of such payment after coming of age, II. 718.
to a trustee, II. 719.
stat. 36 Geo. III. c. 52...II. 719. (*See* III. 28.)
costs of suit to secure legacy, II. 720.
when executor may allow maintenance out of the legacy, II. 720, *et seq.* (*See* MAINTENANCE.)
when the court will order it, II. 721, *et seq.*
feme covert legatee, II. 730—737.
(i.) under Married Women's Property Act,
must be paid to her only, II. 731.
what property comes under, II. 732 n.
(ii.) apart from Married Women's Property Act,
payment must be to husband by Common Law, II. 730.
so where wife a foreign subject and husband entitled by foreign law, II. 737.
interference with husband's right,
by wife's equity to a settlement, II. 731, *et seq.*
what amount will be settled, II. 733 n.
form of settlement, II. 733 n., 736.
on whom equity binding, II. 737.
where the equity not allowed, II. 733 n., 735, 737 n.
when wife may waive her right, II. 735—737.
by gift being to separate use of wife, II. 731.
where the legatee is abroad, III. 738. (*See* III. 28, 498.)
when presumed to be dead, II. 738.
payment into the bank under 36 Geo. III. c. 52, s. 32 . . . II. 738, III. 497.
where legatee is a bankrupt, II. 270.
where legatee has assigned his legacy, II. 739.
where legacy has been attached, II. 739 n.
where legatee is a convict, II. 740.
interest upon legacies, II. 741, *et seq.* (*See* INTEREST.)
in what currency legacies are to be paid, II. 758, *et seq.*
in property, II. 760 n.
by note, II. 214 n.
payment of specific legacies, II. 653 n., 684 n., 762.
right of selection in a legatee on a certain number of a stock of articles, II. 765.
such of a class of articles as legatee may select, II. 766.
legacy of an unopened packet, II. 766.
quære whether executor has right of retainer against for debt due to estate, II. 158 n., 624.
when legatee entitled to the increase, II. 760,—764.
when bequest is confined to date of the will, II. 764, 764 n., *ibid.*
by stat. 1 Vict. c. 26, s. 24. will to take effect as if executed immediately before the death, II. 762.
charged on devise, II. 585 n., 709 n., III. 189 n., *et seq.*
by sale of lands, III. 167 n.
under testamentary power, III. 203 n.

PAYMENT OF LEGACIES.—*Continued.*
by domestic administrator, III 137 n.
foreign administrator. III. 137 n.
administrator *pend. lite*, I. 594 n.
residuary legatee, giving statutory bond, I. 626 n.
out of principal assets, II. 760 n.
income, II. 723 n., 761 n.
and in case of annuity, II. 663 n.
subject to set-off, II. 619 n.
debts, III, 215 n.
order of abatement, III. 215 n.
marshalling assets, III. 220 n.
will not be ordered without administration except on admission of assets, III. 594.
purchase of legacy by executor from legatee at a reduced price, void, II. 125, III. 402 n. (*See* III. 402 n., 628 n.)

PAYMENT OF MONEY INTO COURT,
in equity,
when executor may be compelled to make, III. 593, *et seq.*
who may move for, III. 596.
executor is not thereby deprived of his lien, or retainer, II. 260, III. 596.
by trustees under stat. 10 & 11 Vict. c. 96, or 12 & 13 Vict. c. 74. III. 497—500. (*See* TRUSTEES.)
provisions of the stat., III. 497—500.
should not be done unnecessarily, III. 500.

PAYMENT OF MONEY OUT OF COURT.
how applications must be made, III. 596, 597.

PEARLS,
what passes by bequest of, II. 488.

PECULIAR,
definition of, I. 338 n.
power of peculiar Ordinary, under the old law, to grant probate, abolished, I. 339.

PECUNIARY LEGACIES,
what passes by bequest of, II. 473 n.

PEER,
whether heir of entitled to journals of House of Lords, I. 847.
bequest to by his title, will not enure for benefit of person holding title at death of testator, II. 500 n.
not incapacitated from acquiring a foreign domicil, II. 922 n.

PENALTY,
for administering without obtaining representation, I. 379.

PENCIL,
will written in valid, I. 158, 159.
rule as to alterations in, I. 160.

PENDENTE LITE,
administration, I. 587, *et seq.* (*See* ADMINISTRATION.)

PENSIONS,
of deceased soldiers and sailors, I. 549, III. 131 n. (*See* SEAMEN, SOLDIERS.)

PER CAPITA,
in what cases parties take by, and in what *per stirpes* under the Statute of Distributions, II. 906.
rule as to legatees, II. 395 n., 907—909 n.
under a bequest to "descendants," II. 391, 408 n.
under a bequest to "relations," II. 395 n.
under a bequest to "representatives," II. 411 n.

PERIOD. (*See* TIME.)

PERISHABLE,
articles, gift of, II. 708.
securities, II. 455, *et seq.*, 700, *et seq.* (*See* CONVERSION.)

PERPETUITY,
gift to a class, void as, II. 552. (*See* also II. 345 n., 346 n.)
as to gift to unincorporated religious society, I. 371 n., 374 n.
as to accumulations for literary or charitable uses, II. 286 n.
rules of, do not apply to charitable uses, II. 325 n.
in condition subsequent, devise absolute, II. 572 n., 573 n.

PERSONAL ESTATE. (*See* ESTATE, *quantity in possession.*)
classification of I. 792.
will of. (*See* WILL.)
the primary fund for the payment of debts of every description, III. 147, *et seq.* (*See* EXONERATION.)
so for the payment of legacies, III. 159, *et seq.*
gift of, held to include realty, II. 328. (*See* CONSTRUCTION. *See* also III. 139 n.)
passes by what words, II. 460 n., 468 n.

PERSONAL ORNAMENTS,
what passes by bequest of, II. 490.

"PERSONAL REPRESENTATIVES,"
who entitled under bequest to, II. 408, *et seq.*
words of limitation, II. 501 n.
of substitution, II. 502 n.

PETITION,
when necessary for payment of money out of Court, III. 596, 597.
application to Court for advice on, under Lord St. Leonard's Act, III. 502.

PEW,
in church, goes to heir, III. 139 n.

PHYSICIANS,
testimony as experts, I. 414 n.
charges in last illness, preferred, II. 172 n.

PIGEONS,
when they pass to executor, I. 831.

PIN MONEY,
what it is, I. 878.
widow's right to savings from, I. 879.
when liable to husband's debts, I. 879.
wife may bequeath them, I. 81.
in arrear, when and for how long recoverable by widow, I. 879.
in arrear, irrecoverable by executor of wife, II. 49.

PLACE,
goods described by reference to, what will pass, II. 453, 459—464, 465, *et seq.*, 637, *et seq.*

"PLANT AND GOODWILL,"
what passes by bequest of, II. 471 n.

PLANTATION. (*See* COLONIES.)
what passes by bequest of, II. 490.
property in the plantations, when assets in the hands of the executor, III. 112—113.
probate here does not extend to, I. 438. (*See* III. 105, *et seq.*)

PLATE,
what passes by bequest of, II. 489.
will pass by a bequest of "household goods," II. 464.
of "household furniture," II. 468.
secus, if in the possession of the testator in the way of his trade, II. 469, 470.
when not liable to legacy duty, III. 17.

PLEAS. (*See* REMEDIES.)
in action *by* executors and administrators, III. 454.
set-off, III. 454, *et seq.* (*See* SET-OFF.)
Statute of Limitations, III. 458, *et seq.* (*See* LIMITATIONS.)
denial that plaintiff is executor must be specific, III. 464.
in actions *against* executors and administrators, III. 522, *et seq.*
bankruptcy, III. 522.
pleas by several executors, III. 522.
ne unques executor, III. 523, 524, 561 n.
evidence on issue joined, III. 524.
plea by administrator whose letters are revoked, III. 525.
Statute of Limitations, III. 525—531. (*See* LIMITATIONS.)
set-off, III. 532. (*See* SET-OFF.)
plene administravit, III. 533, 559 n. (*See* PLENE ADMINISTRAVIT.)
plene administravit præter, III. 534, *et seq.*
replication to, III. 536, *et seq.*
evidence for plaintiff on issue joined, III. 538, *et seq.*
evidence for executor that assets have been exhausted, III. 541, *et seq.*
satisfaction of another judgment after action brought, III. 534, 536 n., 542.
quære, how this should be pleaded, III. 536 n.
retainer, III. 536.
form of plea, III. 536.
upon proceedings after judgment obtained against testator, III. 552
of want of authority, in action on bond, I. 646 n.
of non-claim, obligatory, II. 243 n., 244 n.
of insolvency, obligatory, II. 252 n.
good, to *sci. fa.* on judgment, II. 255 n.
in suits in equity *by* executors and administrators,
denial that plaintiff is executor, must be specific, III. 464.
Statute of Limitations, III. 482, 483.
death of co-executor, III. 485.
set-off, III. 482.
in suits in equity *against* executors and administrators,
Statute of Limitations, III. 627, *et seq.* (*See* LIMITATIONS.)
set-off, III. 611. (*See* SET-OFF.)

PLEDGE. (*See* PAWN.)
executor may redeem, II. 85.
of wife's choses, II. 74 n.

PLENE ADMINISTRAVIT,
plea of,
when necessary, III. 533.
consequence of not pleading before the Judicature Act, III. 533
semble, old rules still material, III. 534.
in the United States, III. 582 n.
effect of assets and account in ancillary jurisdiction, III. 135 n., 136 n.
form of, III. 533, 534.
necessary averments before Judicature Act, III. 533.
what are necessary or expedient now, III. 534.
by executor of executor, III. 534.
plene administravit præter, III. 534.
when necessary, III. 534.
where judgment recovered against testator and another, III. 535.
replication to, III. 537, *et seq.*
that a judgment pleaded is fraudulent, III. 537.

PLENE ADMINISTRAVIT.—Continued.
executor must traverse the fraud in his rejoinder, III. 537.
evidence under this issue, III. 537, 538.
that the executor had assets at the commencement of suit, III. 538.
evidence for plaintiff on issue joined on a plea of *plene administravit*, III. 538.
the *onus* is on plaintiff, III. 538.
he cannot show assets received since the commencement of the suit, III. 538.
he may show a *devastavit*, III. 538.
inventory exhibited by defendant, III. 539.
probate stamp, III. 540.
what amounts to, admission of assets, III. 540, 541.
evidence for the executor that the assets have been exhausted, III. 541.
by payment of debt of equal or superior degree, III. 541.
of inferior degree, without notice. III. 541.
by expenses of the funeral, III. 541, 542.
of taking out administration, III. 542.
of retainer, III. 536, 542.
of collecting debts, III. 542.
outstanding superior debts must be pleaded, III. 542.
executor cannot show payment since commencement of suit, III. 542.
such payments must be pleaded specially, III. 542.
judgment on, III. 543. (*See* EXECUTION, JUDGMENT.)
for what amount to be entered, III. 544.
when one only of several executors is found to have assets, III. 545.
of assets *in futuro*, III. 546.
costs on, III. 520, 546.

POLICY OF INSURANCE,
power of executor of assurer to procure indorsements of, II. 130.
employed to raise maintenance for infant out of contingent legacies, II. 726.

POOR RATE,
liability of executor as to, III. 272.

PORTION,
satisfaction of, by legacy, II. 614—616.
presumption against double, how repelled, II. 647.
by parol evidence, II. 647—651.
ademption of legacy given as, by father, II. 642, *et seq.*
by testator *in loco parentis*, II. 651.
vesting of, II. 513, *et seq.*, 549, *et seq.*
payable out of settlement funds, when accelerated, is liable to succession duty, III. 48 n.

PORTRAITS,
what passes by bequest of, II. 490.

POSSESSION,
"in possession" construed "entitled to a vested estate tail in remainder," II. 336.
in trover, executor to prove title, II. 86 n.
each co-executor entitled to, II. 152 n.
by legatee implying assent to legacy, II. 680 n., 682 n.

POSSIBILITY,
assignable in equity, II. 88.

POSTERIOR,
of two inconsistent clauses to be preferred, I. 219, II. 333.

POSTHUMOUS CHILD,
description of, in a will, what will answer, II. 359.
birth of, revokes will, I. 245 n.

POSTHUMOUS CHILD.—*Continued.*
avoids devise to living children, II. 342 n.
shares in immediate gift to children, II. 343 n.
gift to children born or to be born, II. 344 n.
not affected by direction as to advancements, II, 646. n.
entitled to a distributive share of effects of intestate under the statute, II. 877, 905.

POST-NUPTIAL SETTLEMENT,
when valid, I. 874, *ibid.*, n.

POSTPONEMENT
of legacies. (*See* LAPSED LEGACIES.)

POVERTY
of executor no ground for granting receiver, I. 276, III. 593 n.

POWER,
of executor . (*See* EXECUTOR.)
of co-executors. (*See* CO-EXECUTOR.)
will of married woman made under, I. 75—80, 464, 469 n. (*See* HUSBAND AND WIFE.)
will purporting to execute a power which does not exist, may operate as a mere will, I. 150.
when will executing a power is revoked by subsequent will, I. 224—226, 226 n.
where will executing a power is not revoked by subsequent marriage, I. 236.
to be admitted to probate, though not conformable to the law of the place of domicil, I. 446. (But *see ibid.*, n.)
whether to be admitted to probate without any decision as to whether authorized by power, I. 76—79.
when probate of necessary, I. 469. (*See* I. 76, 469 n.)
general power executed by general bequest (Wills Act, s. 27), II. 805, *et seq.*, n.
unless will shows contrary intention, II. 805 n.
contrary intention not shown by failure of appointment, II. 805 n.
nor by power being created after date of will, II. 805 n.
resulting trust on failure of appointment, II. 805 n.
probate duty on executing general power by will, I. 757, 758.
duty on legacies subject to, III. 18.
duty on successions where exercised, III. 40 n., 87.
given to executors. (*See* ESTATE, *quantity in Possession.*)
whether they may exercise it after renouncing, I. 335. (*See* II. 146, *et seq.*)
when they take merely a power to sell, and when a fee in trust, I. 778, 798 n.
of sale, cannot be exercised by attorney, II. 129, 133 n.
whether they may exercise it by a sale to one of themselves, II. 125 n.
whether a person who can become executor can purchase from executors, II. 125.
to sell land,
all co-executors should join, II. 154 n., 155 n.
not including executor in codicil, when, II. 152 n.
how created, I. 798 n.
when implied, I. 797 n.
discretionary, III. 371 n.
execution when, III. 371 n.
as to land held adversely, III. 371 n.
when one of several renounces, II. 146.
to appoint executor or trustee,
exercise by surviving executor, I. 286 n.
trustee, II. 155 n.
by agent (as donee of power). I. 286 n.
after removal of trustee, I. 722 n.
exercise of power to appoint a new trustee given to a man and his executors when he is dead, and one of them renounces, II. 148.
exercise of powers by surviving executors, II. 148, 155 n.
by a single survivor, II. 149, 150.
rule introduced by Conveyancing Act, II. 150.
by executor of executor, II. 156—157, 158 n., 592 n.

POWER.—*Continued.*
by administrator *durante minoritate*, I. 583, 595 n.
by administrator *pendente lite*, I. 587, 590.
by administrator *durante absentia*, I. 595.
by administrator *de bonis non*, II. 162 n.
no appointment for that purpose, I. 575 n.
by administrator *cum testamento annexo*, I. 565 n., II. 162 n.
lapse of legacy of given under, by death of legatee before appointor, II. 505, *et seq.*
or before exercise of power of sale, II. 497 n.
executor of object of, cannot be an appointee, II. 91.
when court interferes with discretionary exercise of, III. 608.
exercise of a general power makes subject thereof assets, III. 128—129.
quære in case of married woman whether exercise of general power by will makes subject thereof assets, III. 128, 129 n.
of attorney. (*See* ATTORNEY.)
to execute a power of sale, II. 133 n.
to assign a mortgage, II. 132 n.
liability of executor for acts done under, III. 301.

PRACTICE,
of Court of Probate, I. 384, *et seq.*, 448, *et seq.*, 541. (*See* COURT OF PROBATE PROBATE, *manner of obtaining.*)
of County Court, I. 360. (*See* COUNTY COURT.)

PRECATORY WORDS,
in a will, when they create a trust, I. 155 n.
when they create a condition, II. 560 n., 561 n.

PRE-EMPTION RIGHT,
when may be sold by administrator, II. 25 n.

PREFERENCE,
by executor, among creditors, II. 208 n., 256, *et seq.*, III. 492 n., 536 n. (*See* DEBTS.)
how controlled, II. 256, 257.
devastavit by disregard of statutory, III. 374 n

PREROGATIVE OF CROWN, I. 479. (*See* BASTARD, CROWN.)

PRESENTATION,
next to a church, I. 807, *et seq.* (*See* CHURCH.)

PRESENTMENT OF CLAIMS,
statutory notice to present, II. 231 n.
effect of omission, II. 232 n., 234 n., 235 n.
proof of notice, II. 232 n.
effect of non-presentment,
to bar claim, II. 232 n.
to bar suit, II. 233 n., 241 n.
except as to surviving partners, II. 236 n.
insolvent estates, II. 254 n.
and on formal allowance, II. 249 n.
to bar set-off, II. 235 n.
presentment of what claims, II. 235 n., *et seq.*
executor's own debt, II. 235 n., 268 n.
debts not due, II. 237 n.
contingent claims, II. 238 n.
collateral liens, II. 221 n., 239 n.
to one executor, II. 240 n,
Probate Court, II. 240 n.
by whom, II. 240 n.
in what form, II. 240 n.
action sufficient when, II. 242 n., 243 n.
when made, II. 244 n., III. 567 n.

PRESENTMENT OF CLAIMS.—*Continued.*
from execution of bond, I. 628 n.
effect on statute of Limitations, III. 567 n.
on interest, II. 226 n.
waiver of, II. 246 n.
additional proof of claims, II. 247 n.
of executor's own claim, II. 267 n.
presentment necessary,
as against deceased surety, I. 635 n., II. 240 n.
co-surety, I. 642 n.
or principal, I. 643 n.
as against deceased predecessor's contingent liability on his bond, II. 161 n.
as against heirs and devisees, III. 207 n.
as against insolvent estates, II. 252—255 n.
allowance of claims, II. 247 n., *et seq.*
by personal representative, II. 247 n.
by temporary administrator, I. 611 n.
by Probate Court, I. 676 n., II. 249 n.
by commissioners, II. 250 n.
prerequisite to suit on bond, I. 649 n.
rejection of claim, II. 247 n., *et seq.*

PRESIDENT,
of Probate Division to have power to make rules, I. 386.

PRESUMPTION OF DEATH, I. 378 n., 493, 546 n., 555, 678 n., II. 497, 738.

PRESUMPTION OF LAW. (*See* EVIDENCE.)
as to sanity, I. 22 n., 26 n., 47 n.
as to knowledge of contents of will, I. 115 n.
as to due execution, I. 144 n., 147 n.
as to undue influence, I. 59 n.—68 n.
by draftsman, I. 59 n., 68 n., 163 n.
by attorney, I. 67 n.
as to alterations, I. 160 n.—162 n.
as to lost will, I. 207 n.
as to destruction of will, I. 457 n., 458 n.
as to revocation by marriage, I. 236 n., 237 n.
by birth of issue, I. 241 n.
as to omission of children, I. 242 n., 243 n.
as to decedent's death, I. 546 n., 678 n.
as to jurisdiction, I. 349 n., 483 n., 677 n., 678 n.
as to probate of ancient will, I. 466 n.
as to title of devisee, I. 468 n.
as to probate procedure, I. 672 n., *et seq.*

PRIMARY SENSE,
construction of words in, II. 327.

PRINCIPAL,
death of, revokes authority of agent, III. 227.
agent cannot sue executor of, for acts done after his death, III. 227.

PRINTING,
will may be in, I. 159 n.

PRIORITY. (*See* CREDITOR, DEBT.)
of creditors to legatees, II. 653, *et seq.*
of creditors, *inter se*, II. 187, *et seq.*

PRISONER,
of war,
wills made by, stat. 28 & 29 Vict. c. 72. . . I. 474.

PRIVILEGED COMMUNICATIONS,
between executrix and her husband, II. 114 n.

PRIVITY,
between administrator *d. b. n.* and predecessor, I. 576 n., 586 n., II. 113 n., 159 n., 161 n., 162 n.
durante min aet and executor, I. 586 n.
foreign administrators, I. 586 n., 612 n.

PRIZE MONEY,
payment of, to representatives of deceased, I. 550. (*See* SOLDIERS, SEAMEN.)

PROBATE. (*See* WILL, *Court of Probate.*)
what it is, I. 337.
is an acceptance of trusts by executors appointed trustees, III. 321.
must be obtained in the Court of Probate, I. 339, 341 n. (*See* COURT OF PROBATE.
prescriptive jurisdiction of some lords of manor to grant probate under the old law, I. 337.
in the United States:
in what court, I. 341 n.
in what county, I. 345 n., 352 n.
jurisdictional facts, I. 349 n.
residence of decedent, I. 352 n.
locality of assets, I. 429 n., 354 n.
in Confederate States, I. 354 n.
relation of, to testator's death, I. 355.
subsequent grant of, to be made where original will is registered, I. 359
in facsimile, I. 390, 466, 669, *et seq.*
Of what instruments it is necessary, I. 468.
mixed will of lands and goods, I. 468.
or where executors are appointed in a will of lands only, I. 268 n., 469
secus where the will clearly respects lands only, I. 468.
where it is doubtful whether all the property is freehold, I. 470.
of will made in execution of a power, I. 470.
by *feme covert*, I. 75, 464, 469. (*See* HUSBAND AND WIFE.)
of sealed packets directed by testator not to be opened, I. 470.
of contingent will, I. 231 n., 235.
even though contingency has not occurred, I. 235.
not of a deed declaring a trust of a bequest by will, I. 471.
nor of will appointing guardians, I. 472.
nor of will giving legacies out of real estate, I. 472.
nor of will of money directed to be laid out in land, I. 472.
nor of will of lands converted in equity, I. 472.
nor of proceeds of sale of realty liable to be laid out in land, I. 785 n. (*See* CONVERSION.)
nor of will of deceased sovereign, I. 15.
of part of a will, I. 52, 54 n., 454.
of instruments not purporting to be testamentary, I. 148—150.
of lost will, I. 207, 209 n., 456.
of lost will (contents unknown) as a revocation merely, I. 230 n
of wills of foreigners, I. 428, *et seq.*
of foreign wills, I. 434 n.
of duplicate wills, I. 375 n., 392 n.
of mutual wills, I. 10 n.
of joint wills, I. 177 n.
of instrument with blanks, I. 113 n.
with alterations, I. 161 n.
signed with testator's mark, I. 104 n.
of papers referred to in will, I. 139 n., 150 n., 471 n.
bare nomination of executors entitles the paper to probate, I. 245, 268, 469.

What the executor may do before, I. 362, *et seq.* (*See* also, I. 759.)
these acts stand good, though he die without proving the will, I. 363.
if acts done before probate are relied on, a subsequent probate must be shown, I. 365.
he cannot maintain actions, I. 366, *ibid.*, n., 368 n.
except he has had actual possession, I. 367.
nor can his grantee, I. 368.

PROBATE.—*Continued.*
he cannot move for new trial, I. 368, 369, II. 95.
but he may commence an action, I. 369, III. 484. (*See* III. 455.)
in some cases he may avow or declare, I. 369.
he may present a petition in bankruptcy, I. 370.
but cannot get a receiving order, I. 370.
he may present a winding-up petition under Companies Act, I. 370.
he may be sued, I. 370.
if he die, his executor shall not be executor to the first testator, I. 371.
if he has administered he will be liable even though administration committed to another, I. 370 n.

In which of the ecclesiastical courts it was to be obtained under the old law, I. 337.
generally before the bishop of the diocese where testator dwelt, I. 337.
peculiars, I. 338.
the Archbishop's prerogative where there were *bona notabilia*, I. 337, 338. (*See* BONA NOTABILIA.)

By whom the will must be proved, I. 372, *et seq.*
the executor may be cited to prove, I. 323, 372.
at the instance of any party having an interest, I. 372.
the holder of a will may be cited to produce it, I. 373.
he cannot dispute the jurisdiction, I. 375.
an attorney has no lien upon the will of his client, I. 375.
its production not essential to give jurisdiction, I. 350 n. (*See* I. 460 n.)

When the will is to be proved,
the testator may record and register his will in his lifetime, I. 378.
time when executor ought to prove, I. 379.
(stat. 55 Geo. III.) penalty for administering without proving within six months, I. 379, II. 173.
probate not to issue until after seven days from death of the deceased, I. 381.
after the lapse of three years, I. 381.
delay how to be accounted for, I. 381.
Manner of obtaining probate. (*See* also COURT OF PROBATE.)
in common form, I. 381, *et seq.*
when affidavit necessary, I. 389.
attestation clause imperfect, I. 389.
will exhibiting obliterations and alterations unattested on the face of it, I. 390.
after citation of persons interested to propound a later paper, I. 391.
in solemn form or *per testes*, I. 391, *et seq.* (*See* APPEAL.)
under the practice before 1857... I. 392.
under the practice, since, I. 392.
the executor may, after proof in common form, be cited to prove *per testes*, I. 393.
whether any limit of time, I. 393 n.
procedure, I. 394 n.
by next of kin, who has received a legacy, I. 394.
legatee who has renounced administration with the will annexed, I. 396.
when next of kin liable to costs, I. 399—401.
when prior executor, I. 400, *ibid.*, n.
when heir at law, I. 401.
a creditor who has obtained letters of administration not liable to costs, I. 400.
costs where action tried by jury, I. 401.
when an executor may re-propound, I. 691.
the executor may himself prove in solemn form in the first instance, I. 394.
in such case, a next of kin cannot call for proof if privy to suit, I. 396.
a creditor cannot dispute the validity of a will, I. 399.
unless administration has been granted to him, I. 399.
a legatee cannot set up a will pronounced against after being litigated by next of kin, or by the executor of another will, I. 399.

PROBATE.—*Continued.*
heir, etc., must be cited when a will is proved in solemn form, I. 401, 666, *et seq.*
where the validity of the will is decided on, the decree of the court is to be binding on the persons interested in the real estate, I. 401.
provided they have been cited, I. 402.
heir who has been cited not generally liable to costs, I. 402.
how the order for citation of the heir is to be obtained, I. 402.
appointment of administrator *pendente lite*, I, 592 n.
of guardian *ad litem*, I· 385 n.
notice of hearing, I. 385 n. 389 n.
of the wills of seamen and marines, I. 473, *et seq.* (*See* SEAMEN.)
of the wills of foreigners and Englishmen domiciled abroad, I. 428, *et seq.*, 434 n.
when probate here necessary, I. 352 n., III. 514.
according to what law their validity shall be decided, I. 439, *et seq.*
when made under a power, of property in this country, I. 446.
of will, where estate under 100*l.*, through the County Court, I. 361. (*See* COUNTY COURT.)
evidence in testamentary causes, I. 403, *et seq.*
rules of evidence in common law courts to be observed in the Court of Probate, I. 403.
competency of witnesses, I. 403.
of executor, I. 168 n., 403, 404 n.
of witnesses and parties, I. 404.
witnesses may be examined *vivâ voce*, I. 404.
how evidence is to be taken in contentious matters, I. 405.
Court may issue commissions, or give orders for examination of witnesses, I. 406.
attesting witnesses, I. 406.
not necessary to call both, I. 388 n., 407.
recollection of witnesses, I. 144 n., 146 n., 411 n.
effect of attestation clause, I. 144 n., 411 n.
evidence of decedent's death, I. 546 n., 673 n.
presumption of death, I. 673 n., 678 n.
civil death, I. 378 n.
proof of handwriting, I. 411.
on proof of signing, instruction and knowledge of contents presumed, I. 411.
where legatee writer of his own legacy, I. 413.
where testator is blind, or cannot read, I. 414.
where capacity of testator is doubtful, I. 414.
proof of handwriting of the attesting witness only, sometimes sufficient, I. 416.
seaman's will in favor of his agent, I. 416.
parol evidence of the testator's intention, I. 416—420.
receivable to explain an ambiguity on the *factum*, I. 417, 421 n.
what is such an ambiguity, I. 418.
it must be on the face of the instrument, I. 420.
it must be completely removed by the proposed proof, I. 420.
since Wills Act omissions in wills cannot be supplied, I. 421. (*See* II. 333—335.)
but words inserted by mistake may be omitted, I. 422 n.
and mistakes of copyist corrected, I. 423 n.
verdict in an action brought to try the validity of a will as to realty not admissible in a testamentary cause, I. 423.
when the declarations of the testator are admissible in evidence. I. 424—428, 460 n.
practice of the Court, I. 448, *et seq.*
in the United States, I. 385 n.
as to nuncupative wills, I. 168 n.
as to holographic wills, I. 388 n.
a proceeding *in rem*, I. 388 n., 392 n.
agreement for different will is inadmissible, I. 10 n., 386 n.
agreement not to contest will, I. 397 n.
citation of parties interested, by next of kin contesting a will, I. 691.

PROBATE.—*Continued.*
when costs decreed out of the estate, I. 450.
re-propounding a will by executor, I. 691.
probate may be granted in part, I. 454.
but the court cannot expunge, I. 455. (But *see* I. 422 n., 423 n.)
whether the probate should incorporate papers referred to by the will, I. 139—143.
probate of a lost will, I. 207, 456.
probate in a right name to an executor wrongly named in the will, I. 456.
probate of a will fraudulently cancelled, or becoming illegible, I. 459.
cancelled by testator when *non compos*, I. 461.
double probate, where there are several executors, I. 462.
several executors with distinct powers, or for distinct portions of time, I. 463.
new probate in case of executor of executor, not required, I. 464.
probate in case of executor named only in a codicil of both the will and codicil, I. 463.
probate of a will cannot be granted during a contest as to the validity of a codicil, I. 464.
unless by consent, I. 464.
probate of a will of feme covert, I. 75—90, 464, 469 n., *et seq.* (*See* HUSBAND AND WIFE.)
form of such probate before Married Women's Property Act, I. 464.
since Married Women's Property Act, I. 465.
limited probate, I. 88, 463, 464.
administratio cæterorum, I. 465.
probate, making out, I. 466.
probate of will in foreign language, I. 466, 668.
probate of will in fac-simile, I. 390, 466, 669, *et seq.*
practice where probate is lost, I. 466.
mandamus to compel cannot be issued since Judicature Act, I. 467.
of wills of seamen and marines, I. 473, *et seq.* (*See* SEAMEN.)
deposit of wills, I. 375.
recording and filing of wills in the United States, I. 376 n.

Evidence of the grant,
what is sufficient, III. 464, 465, 475 n.
where there are several executors, III. 465.
proof of revocation of, III. 465.

Effect of,
operates as to the authentication of the executor's title, I. 346, III. 464, *et seq.*
is an acceptance of trusts where executor appointed trustee, III. 321.
essential to admissibility of the will, in some states, I. 673 n.
to pass title to realty, I. 672 n.
or personalty, I. 672 n.
renders will admissible in evidence, I. 354 n., 366 n., 673 n.
and available as evidence of title, I. 354 n., 468 n., 673 n.
establishes validity of will, I. 672 n.
as to realty, when, I. 468 n., 675 n.
attacked collaterally, I. 675 n.
foreign probate, how far conclusive, I. 679 n.
as to what facts conclusive, I. 654, 655 n., III. 466, *et seq.*
as to a will and codicil being distinct instruments, I. 657, II. 604.
in what cases a court of equity will interfere, I. 657, *et seq.*
cases where it is not conclusive, I. 664, *et seq.*
alterations in the law as to the effect of probate on real estate since the Court of Probate Act, I. 378, 401, 665, *et seq.*
where will affecting real estate is proved in solemn form, or is contested, the heir and persons interested in the real estate must be cited, I. 401, 665.
where will is proved in solemn form, etc., the decree of the court is binding on persons interested in the real estate, I. 666.
heir in certain cases not to be cited, and where not cited, not to be affected by probate, I. 667.

PROBATE.—*Continued.*
probate or office copy to be evidence of will in suits concerning real estate save where the validity of the will is put in issue, I. 667.
costs of proof of will, I. 668.
how far the original will may be referred to, in order to correct inaccuracies in the probate, I. 668, *et seq.*
translation of foreign will in probate not conclusive, I. 668.

Limited grant, I. 288, *et seq.*, 601, *et seq.* (*See* EXECUTOR, *limited executor*—ADMINISTRATION, *temporary and limited.*)

Extent of,
does not extend to foreign assets, I. 429 n., 436, *et seq.*

Revocation of, I. 467, 682, *et seq.*
what courts have jurisdiction in the United States, I. 692 n.
equity jurisdiction, I. 693 n., III. 656 n.
when application may be made, I. 387 n.
who may apply for, I. 398 n., 708 n.
procedure, I. 708 n., *et seq.*
upon citation, I. 682.
upon appeal, I. 682—684. (*See* APPEAL.)
second grant of probate without revoking the first, I. 685.
what are sufficient grounds, I. 685, *et seq.*, 694 n., 699 n.
wrong stamp, I. 741.
discovery of later will, I. 458 n., 462 n.
what are not sufficient grounds, I. 690, *et seq.*
how far a party who has once propounded a will and withdrawn, barred, I. 691.
executor who has proved in common form cannot as executor seek revocation, I. 691.
nor can an executor of an executor, I. 691.
citation by next of kin, contesting a will, of parties, interested, I. 691.
of will of one falsely supposed to be dead, I. 692. (*See* I. 546 n., 678 n.)
how proved, III. 465.
consequences of, I. 698 n., 715, *et seq*,. 721 n.
where the grant is void, I. 694 n., 699 n., 715,
voidable, I. 717.
payment to executor under void probate is a discharge, I. 656, 715, 718, III. 467. (*See* I. 721 n.)
recouping in damages for debts paid, etc., in the course of administration, I. 720.
abatement of suit formerly, I. 719.
no abatement since Judicature Act, I. 719.
modern practice, I. 719.
order for carrying on proceedings, I. 719.
where judgment obtained leave to issue execution may be obtained, I. 719.
pleading by administrator after administration revoked, I. 720, 721 n.
of ancillary probate, I. 439 n., 444 n.
of will made under a power, I. 76—79, 469.
where testator domiciled abroad, I. 445.
of will of married woman made under a power, etc., I. 75—80, 464. (*See* HUSBAND AND WIFE.)
expenses of, priority of payment in administration of the assets, II. 186. (*See* III. 425.)

PROBATE DIVISION. (*See* COURT OF PROBATE.)

PROBATE DUTY,
DUTIES ON PROBATES AND LETTERS OF ADMINISTRATION, I. 723, *et seq.*
duty to be charged by stamps on affidavit of account to be delivered by personal representative, I. 724, 725, 728, 732.
penalty for neglect to deliver account, I. 733.
account to include particulars of personal estate and estimated value, I. 723. (*See* II. 513 n., III. 36—38 n.)
debts and funeral expenses, where deceased domiciled in United Kingdom, may be deducted, I. 727.

PROBATE DUTY.—*Continued.*
donations *mortis causâ* to be included in account, I. 732, 895 n., III. 37 n.
property accruing by survivorship where deceased settlor, I. 732, III. 37 n.
property subject to voluntary settlements in certain cases, I. 732, III. 37 n.
stamp duty on the voluntary settlement to be returned, I. 732.
where gross value of estate does not exceed £300, I. 729—731, III. 2 n.
where does not exceed £100. . .I. 361, 726, 730—731, 737, III. 2 n.
wills of seamen and soldiers slain in battle exempt from duty, I. 738.
amount of duties, I. 726, 727.
the stamp must be enough to cover the value as it stood *at the date of the grant of letters, etc.*, I. 750.
to be charged on ships, I. 737.
ecclesiastical courts not to grant probate or letters without affidavit of value, etc., I. 738.
affidavit to be sent to commissioners of Inland Revenue, I. 728.
what property to be included in the value sworn to, I. 749—758, II. 513 n.
provision for too high a duty being paid, I. 728, 739.
for too low a duty, I. 729, 740.
ecclesiastical courts not to take surrenders of probate, etc., on the ground of wrong stamp, I. 741.
further stamp duty not to be received by commissioners of stamps without notice to the Ordinary who granted the letters, I. 740.
penalty on executors or administrators not paying full duty, I. 741.
penalty for not proving wills or taking letters of administration within a given time, I. 738, II. 173.
credit may be given for the duty, I. 741—743, II. 191.
duty in such case to have priority over all other debts, I. 743, II. 190, 191.
case of letters *de bonis non* taken out before payment, I. 743.
probate and letters of administration to bear certificate instead of stamp, I. 728.
how an executor may discharge his liability to duty, I. 724.
power of Commissioners to call on executor within three years to verify accounts, I. 731.
affidavits by executor residing out of England, as to trust money, I. 744.
what is trust property within the 55 Geo. III. c. 184. . . I. 750.
provisions of former acts to extend to 55 Geo. III., I. 744.
48 Geo. III. c. 149, probates, etc., valid as to trust property, though not covered by stamp, I. 745.
affidavit by executor as to trust, I. 745.
39 & 40 Geo. III., allowance for useless stamps, I. 747.
41 Geo. III., stamp for probate or letters, where probate or letters before taken out, and duties paid, I. 747, 748.
28 & 29 Vict. c. 104, s. 57, summary proceedings for payment of probate duties, I. 748.
probate, etc., not properly stamped cannot be given in evidence, I. 748.
consequence of its appearing at trial that stamp is too low, I. 748.
grant not void, I. 749.
neither action at law, nor any proceedings in equity maintainable as executors, etc., to recover more than stamp covers, I. 794, *ibid.*, n.
what debts must be included in the amount of stamps, I. 749.
duty regulated by value of assets, within jurisdiction of the court, which grants probate, I. 751, *ibid.*, n.
duty on property in a foreign country, I. 752, 753.
bonds of foreign states, I. 754.
no duty on land directed to be converted into money, I. 755. (But *see* I. 387 n., 756, 757 n.)
payable on partnership real property, I. 756 n., 757.
and on land contracted to be sold, I. 755.
23 & 24 Vict. c. 15. s. 4, personal estate appointed by will under general powers to be chargeable with probate and inventory duties, I. 758.

PROBATE DUTY.—*Continued.*
probate and inventory duties in respect thereof to be a charge on the property, I. 758.
when payment of probate duty exempts from legacy duty and succession duty. I. 733, III. 2 n.

PROCEDURE. (*See* REMEDIES.)

"PROCEEDS,"
gift of, may mean income, II. 482 n.

PROCESS. (*See* CLAIM, REMEDIES.)
in an action *by* executor, etc.,
formerly need not state his special character, III. 451, 452.
now by Judicature Acts indorsement of claim must show in what capacity he sues, III. 452.
in an action *against* executor,
he must be named executor in the indorsement of claim, III. 452, 520.
service on one of two executors in possession is sufficient in an action of ejectment, III. 520, 521.

PROCTOR,
no suit for his fees could be entertained in the Ecclesiastical Court, III. 664.

PRODUCTION OF PAPERS,
rule as to, respecting executors, III. 597.
of will from Probate Registry, I. 377, 466 n., 469.
of testamentary papers may be enforced by court, I. 373, 374, 376 n.

PROFERT,
of letters testamentary, etc.,
unnecessary since the C. L. P. Act, III, 453.
should be pleaded, when, I. 362 n., II. 85 n., III. 475 n.

PROFITS,
executor liable for, II. 139 n.

PROMISSORY NOTE. (*See* BILL OF EXCHANGE.)
will not operate as a will, III. 71 n.
given or endorsed to executor he may declare upon it as such, I. 722 n., II. 22 n., 80.
payable to testator may be endorsed by executor, II. 129.
endorsement of, by executor in his representative capacity, II. 129, 134 n., III. 296 n.
by one of several executors, II. 153 n.
where drawee dead, may be treated as dishonored or presentment made to executor, II. 129.
where presentment to be made in such case, II. 129.
presentment for allowance, II. 240 n.
made payable at a time certain after death of testator carries interest from date, III. 278.
given to testator cannot be set aside after his death by uncorroborated evidence of its maker, III. 278.
given to testator assets, though he declared he never would enforce it, III. 121 n.
given by a stranger for the debt of one deceased, I. 307 n., III. 293 n.
testator cannot bequeath so as to pass right to sue one, I. 3 n.
where assets lent by one of co-executors on, who should sue, III. 335 n.
payment on, by executor of joint maker will not take case out of Statute of Limitations against survivor, III. 528.
suit by foreign executor, I. 433 n., 436 n.
by payee's successor, II. 112 n.
by maker, as executor of payee, II. 113 n.

PROPERTY,
what passes under bequest of, II. 459, 467.

PROTECTION ORDER. (*See* HUSBAND AND WIFE.)
will of feme covert of property acquired after, I. 82, 879.
administration to wife dying after, I. 491.
estate vested in wife as executrix after, II. 111.
wife entitled to payment of a legacy bequeathed to her after, II. 731.

PROTECTOR,
of a settlement, executor or administrator cannot be in respect of estate as such, I. 771.

PROVIDENT SOCIETY,
when representation not necessary to member of, I. 552.

PUBLIC ADMINISTRATOR,
bond by, I. 627 n.
appointment, when, I. 380 n.
right to administration, I. 528 n., 534 n.
removal, I. 536 n.
for private appointment, I. 700 n.
account after removal, I. 722 n.

PUBLICATION,
when requisite, I. 126 n.
during signing of witness, I. 116 n.
afterward, I. 128 n.
of nuncupative will, I. 168 n.
form of, I. 125 n., 127 n.
acknowledgement of signature, I. 120 n., 126 n.
assent of testator, I. 126 n.
request to sign, I. 124 n., 128 n.
none requisite under the Wills Act, I. 99, 124.

PUBLIC POLICY,
gifts void as against, II. 284.

PUMP,
whether a fixture, I. 865.

PUR AUTER VIE ESTATE, I. 814. (*See* ESTATE *pur Auter Vie.*)

PURCHASE,
by executor, of assets, bad, II. 125, III. 401, 402. (*See* III. 402 n., 628 n.)
words of, or of limitation, I. 810—812, 828, 829, II. 352, 386 n., 387, *ibid.*, n., 393, 408. (*See* also SUBSTITUTED LEGATEE.)

PURCHASER,
for value,
sale to by administrator, where will concealed, held good, I. 716 n.
effect of notice, II. 135 n.
from distributee after probate revoked, I. 721 n.
sale of real estate to by executor. I. 778, *et seq.* (*See* ESTATE, *quantity in possession.*)
charged with notice of foreign probate, I. 679 n.
generally not bound to see to application of purchase money on sale by executor, I. 781 n., II. 120—122, 122 n., III. 629 n.
of specific legacy after executor's assent, II. 120 n.
of reversion not within Succession Duty Act, III. 49 n.

QUARE IMPEDIT. (*See* CHURCH.)
lies for executor for disturbance in testator's time, II. 5.
whether testator have a chattel interest in the advowson, or be seized in fee, *semble*, II. 5 n.
for disturbance in his own time, II. 78.
where it lies for husband, who survives his wife, in respect of her advowson, II. 71.
whether executor may maintain, without showing forth the will, I. 369 n.
damages recovered on by executor assets, III. 118.

QUEEN. (*See* KING.)
the Queen Consort may make a will, I. 90.
even apart from Married Women's Property Act, I. 90.

QUEEN ANNE'S BOUNTY,
corporation of may hold and take land in mortmain, II. 308.

RABBITS,
when they pass to executor, I. 832.

RAILWAY DEBENTURES. (*See* STOCK OF RAILWAY COMPANY.)
interest on, apportionable, II. 44.
what words in a will will pass, II. 476.

RATES,
mortgage of whether within Mortmain Acts, II. 291, 292 n.

RATIFICATION,
of will by codicil ratifies former codicils, I. 8 n.
quære whether can be of ineffectual revocation of will, I. 194 n.
by legatee of payments made during his infancy, II. 718.

RATIONABILI PARTE BONORUM,
writ, *de*, I. 2.

READ,
proof of a will made by a person who cannot read, I. 20, 414.

READY MONEY,
what passes by bequest of, II. 473 n.

REAL ASSETS,
what are, III. 140, *et seq.*
for payment of simple contract debts (3 & 4 Will. IV. c. 104), III. 144—147.

REAL ESTATE,
which goes to the executor, I. 777, *et seq.*, 799 n. (*See* ESTATE, *quantity in possession*, CONVERSION, PURCHASER.)
control and possession by personal representative, III. 181 n.
right of possession, II. 23 n.
collection of rents, III. 182 n.
partnership realty, I. 794 n., III. 184 n.
lands held in trust, I. 796 n.
action of ejectment, II. 23 n., III. 472 n.
trespass, II, 24 n., III. 472 n.
charge of debts on, I. 780, *et seq.* (*See* III. 159 n., 190 n.)
legacy charged on when it vests, II. 553, *et seq.*
liable now to Succession not Legacy Duty, III. 34 n.
contract to purchase, liability of executor on, II. 24 n., III. 265, 284 n.
contract to be sold, devolution of, II. 25 n., III. 266, 283 n.
what words will pass, II. 459 n. (*See* II. 328 n., 468 n., 801 n.
when probate evidence of devise of, I. 351 n., 377, 468 n., 470, 667, 673 n. (*See* PROBATE, *Effect of.*)
costs of production of original will in actions as to, I. 668.
Probate Division cannot order payment of costs out of, I. 450 n.
held to include leaseholds, II. 328. (*See* CONSTRUCTION.)
will of, need not be proved, I. 468. (*See* PROBATE.)
unless it appoints executors, I. 469.
or realty is converted in equity, I. 468 n.
probate in common form, I. 394 n.
foreign probate, I. 351 n.
in nuncupative form, I. 168 n.
sustained only as to land, I. 711 n.
after acquired lands, I. 5 n., 94 n., 264
married woman's lands, I. 70 n.

REAL ESTATE.—*Continued.*
revocation by testator's conveyance, I. 239 n., 242 n.
power of sale, I. 797 n., III. 203 n.
execution by successor, I. 565 n., II. 155 n.
sale of land, by order of Probate Court, III. 166 n. (*See* SALE OF LAND.)

"RECEIVABLE," construed "received," II. 336.

RECEIVER,
appointment of, in case of a bankrupt or insolvent executor, I. 275, III. 592, 652 n.
not in the mere case of an executor in *mean* circumstances, I. 276, III. 593 n.
appointment of, to whom assignees of bankrupt executor shall account, I. 767.
appointment of, takes effect on perfecting of security, II. 260 n.
appointment of, when it bars executor's right of retainer, II. 260.
appointment of, by Probate Division pending probate, III. 592, 664.
of real estate, may be appointed by Court of Probate *pendente lite*, I. 588.
court may require security from, I. 588.
court may direct remuneration to, I. 590.
appointment of, by Chancery Division will not prevent Probate Division granting administration *pendente lite*, I. 589.
Chancery Division will not now appoint if administration *pendente lite* might be obtained, I. 591, III. 592, 665 n.
appointment of, in case of improper conduct by executor, III. 592.
jurisdiction of the court over the representatives of, III. 593.
will not be appointed to prevent executor using right of retainer, III. 592, 593.
procuring appointment of, and an account of assets waives admission of assets, III. 603.
appointment by chancery in the United States, I. 693 n., III. 593 n.

RECITAL,
erroneous in will how far binding, II. 337, 494, 619.

RECOGNIZANCE,
what it is, II. 205.
will survive to wife, II. 56 n.
liability of executor upon, III. 223.
its priority in order of payment by executor, II. 205.
it must be enrolled, II. 205.
if not enrolled, it ranks as a bond, II. 205.
enrollment of, by order of court, II. 205.
for a future or contingent debt, II. 207, 219.
in the nature of a statute staple, II. 206.
now obsolete, II. 205.
its rank as to payment, II. 207.

RECOVERY,
of land action for. (*See* EJECTMENT.)

RECTIFICATION,
of mistakes in will in the probate, I. 422, *et seq.*, 454. (*See* also, I. 412 n., and PROBATE, *manner of obtaining.*)
of mistakes in will by Court of Construction, II. 337. (*See* CONSTRUCTION.)

RECTOR. (*See* APPORTIONMENT, CHURCH, DILAPIDATIONS, TITHES.)

REDEMPTION, EQUITY OF,
purchase money of, whether a charge on real or personal assets, III. 153. (*See* III. 154, *et seq.*)

REFUNDING,
of legacies, II. 796, *et seq.*
when executor can make a legatee refund, II. 796.
when a creditor can, II. 797. (*See* also, II. 656.)
when one legatee can make another, II. 798.
legatee refunding not charged with interest, II. 798.

REFUNDING.—*Continued.*
no action at law lies to compel, III. 517 n.
bond required by statute in the United States, II. 799 n.
to which creditors must look, II. 799 n., 851 n.
except as against legatees, II. 800 n.
or distributee, II. 851 n.
by residuary legatee to secure annuity, I. 662 n., II. 824 n.
by guardian of legatee II. 799 n., 851 n.
by distributee of intestate estate, II. 799 n.
of money received by executor,
if improperly, he must refund, though he has paid it away to creditors, III. 433.
bond by executor to refund his receipts in case "decedent" proves to be alive. I. 679 n.

REFUSAL,
of office of executor, I. 323, *et seq.* (*See* RENUNCIATION.)

REGIMENTAL DEBTS,
preferential payment of, II. 192.

REGISTRATION,
of judgments, II. 150, *et seq.*, 230. (*See* JUDGMENTS.)

REGISTRY. (*See* COURT OF PROBATE.)
of probate court,
deposit of will in, I. 375.
how a will may be procured from for the purpose of evidence, I. 376, 469. (*See* PRODUCTION OF PAPERS.)
district registries under control of Probate Court, I. 381.

REJECTION. (*See* REPUGNANT CONDITION.)
of words in will for purposes of construction, II. 334.

RELATION,
back of title of personal representative, I. 759, *et seq.* (*See* too, 362, *et seq.*)
of administrator, I. 759, *et seq.*
where deceased had only a special property, I. 762, 777.

RELATIONS,
who entitled under description of, in a will, II. 395, *et seq.*, 513 n.
"poor relations," II. 396.
"near relations," II. 396.
"nearest relations," II. 397.
"relations" of a particular name, II. 397.
"relation" construed next of kin, II. 397.
when *per capita* and when *per stripes*, II. 395 n., 907 n.
"family" synonymous with, II. 405 n.
for indefinite gift to "relations" as a charitable use. (*See* II. 302 n., 314 n., 315 n., 319 n.

RELEASE,
of debts by legacies, II. 618, 619 n.
by appointing debtor executor, II. 624, *et seq.*
of debts, by executor, II. 132 n., III. 362 n.
by one of several executors, II. 153 n.
before probate, I. 364 n.

RELIEF,
due from testator to lord of manor, executor may be sued for, III. 223.
due to testator as lord, executor may sue for, II. 46.
Act for Relief of Trustees, Executors, etc. (10 & 11 Vict. c. 96, and 12 & 13 Vict. c. 74), III. 497, *et seq.* (*See* TRUSTEES.)

REMAINDER. (*See* ESTATE FOR LIFE, TENANT FOR LIFE.)
estates by, vest in executor, I. 828, II. 88, *et seq.*

REMAINDER.—*Continued.*
lease for life, remainder to executors of lessee, I. 828, II. 84.
suits accruing by, to executors, II. 84.
rights of legatee in remainder, as against legatee for life, II. 695, *et seq.*, III. 342, (*See* CONVERSION.)
accelerated by lapse of prior estate, II. 510 n.
death of person entitled in, before life estate ceases, causes no lapse, II. 544 n. (*See ibid.*, n. II. 545, *et seq.*)
whether gift in or substitutionary, II. 394.
after absolute legacy or devise in fee, II. 575 n.
executor's assent to, by assenting to life estate, II. 680 n., 682 n.

REMEDIES. (*See* ACTION.)
for executors and administrators,
at law,
instances where the executor has not the remedy, III. 448.
executor of one of two joint obligees etc., I 793 n., III. 448.
secus, where the *interest* is several, III. 449.
executor of joint tenant of injured property, III. 450.
executor of solicitor bringing action on his bill, III. 450.
taxation thereof, III. 450.
instances where the executor has the exclusive remedy, III. 470 n.
exclusive of creditors, III. 470 n., 471 n.
heirs and next of kin, III. 471 n.
actions relating to land, II. 23 n., III. 472 n.
process, III. 452. (*See* PROCESS.)
parties, III. 450, 473 n. (*See* PARTIES.)
by all co-executors, III. 473 n.
between co-executors, when, II. 152 n., III. 474 n.
against predecessor, although a co-administrator *de bonis non*, II. 161 n.
by administrator *de bonis non*, I. 576 n., II. 112 n., 159 n., III. 474 n.
on the administration bond, I. 649 n.
by administrator *pendente lite*, I. 593 n.
by special administrator, I. 600 n., 610 n.
by foreign executor, I. 430 n., 431 n., 433 n., II. 627 n., III. 476 n.
against foreign debtor, III. 134 n.
by representative after removal, I. 721 n.
resignation, I. 336 n.
cancellation of bond, I. 628 n.
indorsement of writ, III. 452, 453.
formerly writ need not state plaintiff to be executor, III. 452.
under Judicature Act representative character must be shown, III. 452.
executors may sue and be sued as representing estate without joining other persons, III. 452.
joinder with heirs in actions relating to the realty, II. 25 n., 51 n.
claims by or against executor as such may be joined with claims by or against him personally, III. 452.
joinder of actions, II. 53 n., III. 475 n., 479 n.
when executor must claim as such, III. 453.
profert unnecessary since Common Law Procedure Act, III. 453.
oyer of letters, etc., abolished, old law, III. 453, 454.
profert, in the United States, I. 362 n., II. 85 n., III. 475 n.
suits in representative capacity, I. 722 n., II. 22 n., 27 n., 85 n., 86 n., III. 474 n.
in individual capacity, I. 722 n., II. 85 n., 86 n.
how defendant is to protect himself if plaintiff executor sues without having proved the will, III. 454.
pleas, III. 454, *et seq.* (*See* PLEAS.)
set-off, III. 454—457, 476 n. (*See* SET-OFF.)
Statute of Limitations, III. 458, 478 n., *et seq.* (*See* LIMITATIONS.)
evidence, III. 464, *et seq.* (*See* EVIDENCE.)

REMEDIES.—*Continued.*
what is sufficient proof of plaintiff's being executor, III. 464, *et seq.* (*See* I. 668.)
where necessary, III. 464.
of plaintiff's being administrator, III. 466.
where defendant denies that plaintiff is executor he must do so specifically, III. 464.
costs, III. 468, *et seq.* (*See* COSTS.)
audità quereld, III. 469.
now abolished by the Judicature Acts, III. 469.
proceeding in lieu of, III. 469.
County Court Act, III, 469.
presentment of bill of exchange by executor, III. 469.
by distress, II. 46, *et seq.* (*See* DISTRESS.)
remedy on judgment obtained by testator, III. 468.
remedy for administrator who has taken out administration on faith of promise of plaintiff not to sue for breach of covenant, III. 239 n.
in equity,
general rights of executor, III. 481.
application of maxim *actio personalis moritur cum personâ*, III. 481.
action to protect literary property of deceased, III. 481, 482.
or trade mark, III. 481. (*See* II. 5.)
other matters of equity jurisdiction, III. 505 n., *et seq.*
rights peculiar to executor, III. 482.
not retainer and set-off, III. 482.
right to pay statute barred debt, III. 482.
Statute of Limitations may be set up against executor, III. 482, 513 n.
infancy of *cestui que trust* will not prevent statute running, III. 482.
statute runs from death not grant of letters, III. 482.
proceedings against executor in foreign court may be restrained, where persons within jurisdiction, III. 483.
when a creditor will be restrained from proceeding on a judgment after administration granted, III. 483, 484.
when one executor can sue another, II. 86 n., III. 484, 657 n.
executor may commence proceedings before grant of probate, III. 485.
what is sufficient proof of death of testator, III. 485.
parties, III. 485. (*See* PARTIES.)
between co-executors, II. 86 n., 250 n.
joinder of co-executors, III. 512 n.
after resignation of one, I. 336 n.
with heirs and creditors, III. 512 n.
executor cannot sue or defend *in formâ pauperis*, III. 486.
proceeding by originating summons, III. 486, *et seq.* (*See* ORIGINATING SUMMONS.)
executor may pay trust moneys or transfer stocks, etc., into the Court of Chancery, stat. 10 & 11 Vict. c. 96; 12 & 13 Vict. c. 74; Trustee Relief Act, III. 497—501. (*See* TRUSTEES.)
may distribute assets after due notice to creditors and others, stat. 22 & 23 Vict. c. 35 s. 29 . . . III. 501.
may apply to judge of chancery for opinion, etc., in management of trust property, III. 502, 503.
salvage cases, III. 503.
sale of testator's business to a company, III. 504.
court may restrain proceedings against executors, III. 483, *et seq.*
against executors and administrators,
foreign executors, III. 514. (*See* III. 105, *et seq.*)
in the United States,
generally, I. 430 n., 431 n., III. 134 n., 137 n.
on their own contracts, I. 433 n.
as to assets brought into the jurisdiction, I. 431 n., 438 n., III. 137 n.
at law,
an action did not formerly lie where testator could have waged his law. III. 517.
no action lies in Vermont, III. 557 n.

REMEDIES.—*Continued.*
action of debt on simple contract, III. 517.
action of account, III. 517.
no action lies for a legacy, III. 517—518.
unless in consideration of forbearance, III. 295.
secus, as to a specific legacy, III. 517.
where he ceases to hold the legacy as executor, III. 518.
actions for legacies in the United States, II. 111 n., 677 n., III. 558 n.
and for distributive shares, III. 517, 559 n.
other legatees joined, III. 559 n.
under 50*l.* in county court, III. 519.
parties, III. 519. (*See* PARTIES.)
joinder of co-executors, III. 559 n.
administrator *de bonis non*, III. 560 n.
on claim of predecessor, II. 113 n., 114 n.
administrator *pendente lite*, I. 593 n.
joint debtors surviving, III. 560 n.
representative of deceased, *ib.*
representative, after his removal, I. 721 n.
process, III. 520, 521. (*See* PROCESS.)
statement of claim, III. 521.
how defendant charged as executor, III. 521.
in representative capacity, III. 560 n., 561 n.
joinder of counts, III. 521, 522.
claims against executor as such may be joined with claims against him personally, III. 521. (*See* III. 452, 562 n.)
not for conversion by testator and by executor, II. 28 n.
pleas, III. 522, *et seq.* (*See* PLEAS.)
by several executors, III. 522.
ne unques executor, II. 480 n., III. 523, 561 n.
evidence on issue joined, III. 524, 561 n.
by administrator whose letters are revoked, I. 721 n., III. 525.
Statute of Limitations, III. 525—532, 563—578 n.
set-off, III. 532, 563 n.
plene administravit, III. 533, 534, 559 n., 583 n.
plene administravit præter, III. 534, 536 n.
replication to, III. 537. (*See* III. 536 n.)
evidence on issue joined, III. 538.
of executor's bankruptcy, III. 522.
retainer, III. 536.
evidence,
American statutes as to admissibility, III. 578 n., *et seq.*
competency of witnesses, *ibid.*
judgment, III. 543, *et seq.*, 584—587 n. (*See* JUDGMENT.)
on a plea of *plene administravit*, III. 545.
of assets *in futuro*, III. 546, 584 n.
de bonis testatoris, III. 584 n.
de bonis propiris, III. 558 n., 585 n.
quando, III. 584 n.
by confession, III. 587 n.
costs, III. 546. (*See* COSTS.)
on judgment of assets *in futuro*, III. 546.
proceedings on judgment against executor, III. 547, 587 n
by *fieri facias*, III. 547.
de terris, III. 585 n.
de bonis testatoris, III. 584 n.
de bonis propriis, III. 586 n.
supplementary proceedings, III. 586 n.
by attachment of debt due to deceased executor, III. 547 n
by attachment against non-resident executor, III. 587 n.
by *scire fieri* inquiry, III. 547, 548.
by action of debt suggesting a *devastavit*, III. 548—550. (*See* DEVASTAVIT.)
old practice, if testator died after execution sued out, III. 551.
after judgment and before execution, III. 551.

REMEDIES.—*Continued.*
procedure under Judicature Act, III. 552.
remedy on judgment against testator, III. 550, *et seq.*
proceedings in lieu of revivor, III. 551.
proceedings on judgment of assets *in futuro*, III. 552, 553. (*See* REVIVOR.)
remedy against executor of executor, II. 111 n., III. 554.
County Courts Act, III. 554.
remedy by distress, III. 554.
attachment for contempt, III. 586 n.
arbitration, III. 558 n.
entering judgment on warrant of attorney, III. 555.
on cognovit, III. 555.
on an award made on reference by testator, III. 555.
in equity,
what suits may be brought, III. 588, *et seq.*, 651 n.—658 n.
for relief against fraud, III. 651 n.
e. g. to set aside fraudulent conveyance, *ibid.*
notwithstanding a judgment at law for the conversion, II. 161 n.
to restrain maladministration, II. 159 n.
to restrain the removal of funds, I. 431 n.
to protect the estate by injunction, III. 652 n.
against insolvent executor, I. 275 n.
for enforcement of a trust, III. 652 n.
to enforce a charge or lien, III. 655 n.
for an accounting, I. 431 n., 438 n., III. 656 n.
by a foreign executor, III. 137 n.
by residuary legatee, I. 627 n.
for an account of advancements, III. 654 n.
to compel assent to a legacy, II. 679 n.
for payment of a legacy, III. 654 n.
of a distributive share, III. 655 n.
for security of a legacy payable *in futuro*, I. 625 n.
for correction or construction of will, I. 423 n., III. 657 n.
to enforce agreement for mutual wills, I. 176 n.
against contesting will, I. 397 n.
executors and administrators considered in equity as trustees, III. 588.
instances of this, III. 588, 589.
right of individual creditors to sue, III. 589, 653 n.
executor liable to be sued for debts from moment of death, III. 589.
American statutes staying action against representative, III. 565 n., 661 n.
debtor of testator cannot sue to restrain action by executor on ground of intended misappropriation of fund, III. 589.
parties, III. 589—591. (*See* PARTIES.)
representative capacity, III. 658 n.
between co-executors, III. 657 n.
against co-executors, III. 658 n.
joinder with heirs, etc., II. 161 n., III. 659 n.
husband of executrix, I. 272 n.
protection of the estate pending grant of probate or administration, III. 592. (*See* I. 587, *et seq.*)
when application can be made to Chancery Division, III. 592. (*See* I. 591.)
claim for administration not to be joined with claim for protection, III. 592.
receiver *pendente lite*, III. 592, 652 n. (*See* I. 275, 587, *et seq.*)
when a receiver is appointed against an executor, III. 592. (*See* II. 260.)
jurisdiction over executor of receiver, III. 593.
motion for payment of money into court, III. 593.
former limitation as to, III. 593.
admission of assets in executor's hands, III. 594.
court will only act on admission, III. 594.
how executor may discharge himself from payment in, III. 594.
not by showing unauthorized payments, III. 595.

REMEDIES.—*Continued.*
reasonable time allowed for payment in, III. 595.
relief on interlocutory proceedings, III. 596.
who entitled to ask for payment in, III. 596.
applications for, how made, III. 596.
applications for payment out, III. 596.
when by petition, when by summons, III. 596, 597.
production of papers and documents, III. 597.
how application for, to be made, III. 597, 598.
13 & 14 Vict. c. 60, power of Lord Chancellor to make vesting or other order in case of lunatic trustees, III. 598.
13 & 14 Vict. c. 60, and 15 & 16 Vict. 55, power of Court to make vesting orders in case of infants, trustees, and other cases, III. 598.
orders vesting a right to transfer stock, III. 599.
Bank and other companies must obey such orders, III. 599.
meaning of word "trust" in these Acts, III. 600.
appointment of new trustee and vesting order made on summons, III. 600.
duty of executor to keep clear accounts, III. 600.
costs of furnishing accounts, III. 601.
what executor liable to account for under usual administration decree, III. 601.
on footing of wilful default, III. 601.
effect of a judgment for administration, III. 608.
when order on footing of wilful default can be made, III. 601.
after common administration decree, leave necessary, III. 601.
how charge made where no pleadings, III. 601.
when such order not asked for at judgment, III. 602.
proof of, III. 602.
particulars of, III. 602.
when payment ordered without account taken, III. 602.
where executor has made himself personally liable by admission of assets, III. 603.
what is an admission, III. 603, 604.
payment of legacy not conclusive, III. 604.
evidence of probate stamp, III. 605.
what is a conversion of testator's estate by executor, III. 606.
remedy for such *devastavit*, III. 605.
following assets, III. 606.
party injured simple contract creditor, III. 606.
from what time debt under *devastavit* due, III. 607.
discretionary power given to trustees when interfered with, III. 608.
remedy of creditors against executor continuing testator's business, III. 609—611. (*See* TRADE.)
uncorroborated claim against deceased, III. 611. (*See* I. 877 n., III. 277, 278.)
administration action, III. 611, *et seq.* (*See* ADMINISTRATION ACTION.)
defences, III. 627, *et seq.*
Statute of Limitations, III. 627, 659 n., 660 n.
effect of a trust for creditors, III. 628.
Real Property Limitation Act, 1874... III. 629.
money or legacy charged upon land or rent, III. 630.
construction of s. 10 of the Act as compared with s. 25 (2) of Judicature Act, III. 630.
claims on a trust of land or rent, III. 631.
as to personal estate, III. 631.
3 & 4 Wm. IV., c. 27... III. 631, *et seq.*
fund severed from the general estate, III. 632.
claims against executor personally, III. 633.
Trustee Act, 1888... III. 633.
trustee to have benefit of Statute of Limitations, III. 633
from when time runs, III. 634.
creditor claiming on behalf of himself and others, III. 634.
writ of *ne exeat regno*, III. 635, *et seq.*
object of, III. 635.
against a married woman, III. 635.

REMEDIES.—*Continued.*
procedure and practice as to obtaining, III. 635, 63
how limited by Debtors Act, III. 637, 638.
attachment against wife executrix, III. 636.
costs, III. 639, *et seq.* (*See* COSTS.)

in the Probate Division.
compelling executor to account, etc,, III. 662.
form of inventory and declaration in lieu thereof, III. 662, 663.
no suit for a legacy to be entertained by, III. 663.
no suit by next of kin for a distribution to be entered by, III. 664.
has power to grant injunction or appoint receiver, III. 664.
is proper Division to appoint receiver before probate, III, 664.
injunction by executor against co-executor before probate, III. 6

in American Probate Courts,
contest of probate, I. 398 n.
removal of executor, I. 693 n.
accounting, III. 665 n.
after removal, I. 722 n.
suit for legacy, III. 665 n.
for distributive share, III. 665 n.
for claims against estate, III. 666 n.
for partnership settlement, *ibid.*
for construction of will, *ibid.*

in the County Court. (*See* COUNTY COURT.)
equitable jurisdiction to be exercised in suits by creditors, etc., where the estate to be administered shall not exceed, 500 *l.*, III. 668.
trustees may pay trust moneys or transfer stock and securities into County Court, III. 668, 669.
transfer of suits to the Chancery Division, III. 668.
transfer to county courts, III. 669.
powers of County Court judge, III. 668.
in which of the County Courts proceedings shall be taken, III. 670.
rules and orders, III. 671.
particular questions may be decided without administration, III. 671.
partial administration, III. 671.
injunction, III. 671.
parties aggrieved may appeal, III. 672.

REMOTENESS,
legacy void for, as to one member of a class, void altogether, II. 552.

REMOVAL. (*See* ADMINISTRATION, *revocation.*)
causes for, I. 694 n., *et seq.* (And *see* I. 274 n., 275 n., 277 n., II. 181 n.)
need not amount to devastavit, III. 353 n.
jurisdiction for, I. 693 n.
collateral attack, I. 677 n.

RENEWAL,
of lease, executor liable for neglect of tenant for life as to, III. 276.
by executor, shall be assets, III. 101.

RENT, (*See* LANDLORD AND TENANT, LEASE.)
of land agreed to be sold accruing between death of contractor and execution of contract, I. 784 n.
when it goes with the reversion to the heir, and when to the executor, II. 39, *et seq.*
executors chargeable with fair occupation rent when one of them occupies testator's buildings, II. 125 n.
arrears of,
in all cases go to executor, II. 42, 50 n.
cases provided for by stat. 32 Hen. VIII., II. 43.
remedies of executor, II. 42, 43.
apportionable in respect of time and to accrue from day to day by 33 & 34 Vict. c. 35...II. 44.

RENT.—*Continued.*
apportioned part, when payable, II. 44.
remedies for recovery of, II. 44.
meaning of word "rent" in Act, II. 44.
apportionment, where severance of reversion, II. 40, 41, 50 n., 482 n.
due to wife's estate,
when they go to husband's executor, when to her, II. 58—59. (But *see* II. 54, 74 n., 75 n.)
formerly considered a debt by specialty, II. 217.
effect of Hinde Palmer's Act, II. 217, *ibid.*, n.
liability of executor for,
arrears in testator's time,
though the land only may be chargeable, and not the person of testator, yet executor is liable, III. 222, 223.
he is liable only as executor, and must be sued in that character, III. 256, 257.
liability for current half-year's rent, III. 257 n.
as a preferred debt, II. 215 n.
against insolvent estate, up to presentment, II. 253 n.
incurred after testator's death,
if executor enters, II. 52 n.
he may be sued as executor, in the *detinet*, III. 257.
or individually, as assignee, in the *debet* or *detinet*, III. 257.
pleas in such a case, III. 258—261.
effect of assignment, III. 262.
may waive onerous lease on deficiency of assets, III. 262.
if executor does not enter,
he is chargeable in the *detinet*, III. 257, 258 n.
notwithstanding assignment, III. 262.
pleas in such a case, III. 261.
accruing rents, as assets, III. 182 n.
surety's liability for, I. 638 n., II. 52 n.
collected in other state, II. 53 n.
as agent for heirs, II. 51 n.
account for, III. 183 n.
by heir or devisee, III. 208 n.
diligence in collecting, III. 356 n.
legacy charged on, III. 197 n., 208 n.
by bequest of, the land itself shall pass. (*See* ASHTON v. ADAMSON, 1 Dr. & W. 198, and Cf., II. 478.)
what rents intended, II. 480 n., 489 n.
included in gift of "income," etc., II. 479 n.

RENUNCIATION,
of office by executor, I. 713 n.
he may renounce, though he agreed with testator to accept it, I. 323, 326 n., 329 n.
though he has been sworn, I. 329.
but he cannot assign, I. 323.
nor agree to renounce, I. 323 n.
he might be convened by the Ordinary, under the old law, to accept or refuse, I. 323.
but now by the Court of Probate, I. 323.
punishment for neglect to appear, I. 323.
time allowed for deliberation, I. 324.
letters *ad colligendum* in the interim, I. 324.
not acting or not appearing to a citation, he is to be treated as if he had renounced, I. 324, *ibid.* n., 335.
and administration *cum testamento annexo*, will be granted, I. 324.
so also if cited to take probate of a copy of a will, and not appearing, I. 324.
he cannot renounce, if he once administer, I. 325, 326, 334 n., 567.
but court *may* accept renunciation after administration, I. 326.
what amounts to an administration, I. 327—329.
administration granted to another is valid upon his renunciation, although he has administered, I. 326.

RENUNCIATION.—*Continued.*
in such case he may be sued as executor, I. 327.
whether executor of executor can renounce administration to one estate and not to other, I. 326, 332.
if he accept the office, he accepts the trusts annexed to it by the will, III. 321.
how he may renounce, I. 330.
refusal by act recorded, I. 330, 561 n.
case where the Ordinary was executor, I. 332.
form of renunciation, I. 325 n., 330 n., 331.
usual practice to require renunciation to be under hand of party entitled to grant, I. 332 n.
declining to take the oath is a renunciation I. 325, n., 330 n., 332.
cannot be in part, I. 332.
case of an executor of an executor, I. 326, 332, 575 n.
renunciation will not be received, unless accompanied by the will, I. 333.
in double capacity, I. 335 n., 336 n.
implied in one capacity from removal in other, I. 335 n.
implied from marriage of administratrix, I. 573 n.
from acceptance of letters *d. b. n.*, I. 573 n.
consequences of renouncing, I. 333, *et seq.*
renunciation might formerly be retracted at any time before administration granted, I. 333, 334 n.
former practice as to retraction of renunciation, I. 333.
now rights of executor renouncing probate to cease, as if he had not been named in the will, I. 334. (*See* 324 n.)
no person renouncing in one character to take representation in another, I. 335.
this rule capable of modification by the Court I. 335 n.
when it may be retracted, I. 334 n.
when executor renouncing may take a legacy, II. 595, *et seq.*
whether executors may afterwards exercise a power, I. 324 n., 335, II. 154 n. (*See* II. 146, *et seq.*)
executor renouncing may sue his co-executor, I. 336. (*See* II. 151, 629.)
subsequent joinder in suit with co-executor's, I. 336 n.
liability of executor who renounces after an act of administration, III. 386—388.
of right to administer may be retracted before grant sealed, I. 542.
of right to general administration must be made before special administration granted, I. 609.

REPAIRS. (*See* DILAPIDATIONS, WASTE, REAL ESTATE.)
liability of executor of lessee for on covenant, III. 262.
liability where lessee covenanted only for himself, III. 226.
by administrator having statutory authority to rent, II. 51 n.
when allowed to executor, II. 198 n.
improvements not allowed as, II. 198 n.

REPETITION OF LEGACIES,
doctrine of, II. 601, *et seq.* (*See* CUMULATIVE LEGACIES.)

REPLEVIN,
lies for executor, if goods are taken from testator, II. 3, 20 n., 27 n., 86 n
against him, if goods taken by testator are in his hands, III. 229.
of partnership property from surviving partner, I. 793 n.
by administrator of gift *causa mortis*, II. 27 n.
of specific legacy, II. 457 n., 684 n.

REPRESENTATION,
not admitted among collaterals, after intestate's brothers' and sisters' children, II. 905.
to deceased, how court may dispense with and yet bind his estate, III. 590.
to deceased, when unnecessary, I. 547, *et seq.* (*See* ADMINISTRATION.)
of estate of deceased by administrator *ad litem*, I. 606—608, 606 n.

REPRESENTATION ORDER. (*See* ADMINISTRATION ACTION.)
in administration action, III. 626, *et seq.*

REPRESENTATIVES,
who entitled under bequest to, II. 409, *et seq.*, 417.
devise with remainder to testator's II. 403 n.
by way of substitution, II. 408 n.
gift to personal, beneficial when, II. 421 n.

REPUBLICATION,
of wills, I. 247, *et seq.* (*See* WILLS.)

REPUGNANT CONDITION, II. 572—577. (*See* CONDITIONAL LEGACIES.)

"REPUTED OWNERSHIP,"
clause in Bankruptcy Act, what are goods within, I. 766 n.

RESEALING. (*See* SCOTLAND, IRELAND.)
of Scotch confirmations, I. 434.
of Irish probates, I. 435.

RESIDUARY DEVISEE,
residuary legatee so construed, II. 801 n.
who is, within s. 25 of Wills Act, II. 586.
residuary devise is specific, III. 150.
may have an order for administration without serving others interested, III. 627.
may proceed by originating summons, III. 487.
power executed by, II. 828 n.
entitled to after-acquired land, II. 828 n.

RESIDUARY LEGATEE. (*See* RESIDUE.)
what terms of bequest are sufficient to constitute, II. 801, *et seq.*
construction of words, II. 801 n.
rights of general residuary legatee, II. 803—809.
when he is entitled to lapsed legacies, II. 803—809, 826 n., 830 n.
may take a lapsed bequest by substitution, II. 804 n.
entitled to general surplus, II. 825 n., 829 n., 830 n.
void legacies, II. 825 n.
revoked legacies, II. 829 n.
after-acquired lands, if not devisable, II. 828 n.
legacies to witness, II. 281 n.
undisposed of remainder, II. 830 n.
increase in value, II. 829 n.
annuity fund, II. 662 n.
may take income of contingent legacy till contingency occurs, II. 698 n., 829 n.
rights of partial residuary legatee, II. 808.
right of to administration *cum testamento annexo*, I. 554, *et seq.*, 563 n.
his representative has the same right, I. 556.
such right not legal but customary, I. 556.
when he may retract renunciation of administration, I. 557 n.
grant of administration *durante absentiâ* to, I. 598 n.
survivorship as to residue, in case of several legatees, II. 809, 822 n., 824 n
when they are joint tenants, II. 809.
when tenants in common, II. 810—811.
with words of survivorship, II. 812.
when given as to a class, II. 814—821, 823 n.
in case of several executors, II. 820.
death of, before the residue ascertained, II. 801.
cannot call on general legatees to abate, II. 661, 666 n., 824 n.
unless residue of specific sum, II. 666 n.
may have an order for administration of personal estate without service on the rest, III. 627.
case where the estate becomes insufficient by *devastavit* of executor, II. 666. (*See* II. 798 n.)
may proceed by originating summons, III. 487.

RESIDUARY LEGATEE.—*Continued.*
construction of residuary clause, so as to prevent intestacy, II. 523 n.
when compelled to refund, II. 796, *et seq.* (*See* REFUNDING.)
bond for payment of debts, etc., I. 626 n.
conclusive as to assets, II. 181 n.
breach of, II. 181 n.
bond to refund, II. 824 n.
residue lapsing or failing goes to next of kin, II. 839 n.

RESIDUE. (*See* RESIDUARY LEGATEE.)
what words in a will will pass, II. 801, *et seq.* (*See* also II. 458, 466, *et seq.*, 475 n.)
"all my property," II. 460 n.
residue of property, II. 465 n.
of money, II. 472 n.
form of words, II. 825 n.
confined to particular property, II. 825 n.
codicil supersedes will, II. 825 n.
what words will not pass, II. 475 n., 802.
charge of legacies, when implied from blending realty and personalty, III. 192 n.
not charge of debts, III. 195 n.
subject to life estate, II. 825 n.
gift of income of, II. 696 n.
conversion into money, II. 457 n.
whether gift of, specific or general, II. 452—455.
bequeathed for life, remainder over, II. 456—459, 695, *et seq.* (*See* TENANT FOR LIFE, CONVERSION.)
bequest of, when to be enjoyed *in specie*, II. 456—459.
executor's right to, in case there is no residuary legatee, II. 421 n., 831, *et seq.*
vests in executors when, II. 822 n.
in trust, II. 421 n.
stat. 11 Geo. IV. & 1 Wm. IV. c. 40, executors to be deemed trustees for next of kin, II. 831.
cases on the construction of this Act, II. 831, nn., 832 n.
what is sufficient, in cases not within the statute, to bar the executor, II. 833, *et seq.*
parol evidence, when admissible, II. 836.
if it is undisposed of, it must be divided amongst the next of kin, notwithstanding a contrary declaration in the will, II. 838.
gift of to legatee on trusts not disclosed lapses to next of kin, II. 837, 838.
where binding on conscience of legatee court will enforce, II. 838. (*See* I. 471 n.)
survivorship as to, where there are several executors, II. 820.
payment of, by administrator, II. 928.
no suit for distribution of, to be entertained by Probate Court, 20 & 21 Vict. c. 77, s. 23...III. 663.

RESIGNATION,
of executorship,
on application without notice, I. 713 n.
implied from absence, I. 713 n.
removal from state, I. 714 n.
failure to qualify, I. 713 n.
in one of several capacities, I. 714 n.
subsequent accounting, I. 714 n.
subsequent decree for specific performance, I. 336 n.
acceptance of, I. 713 n.
retraction of, I. 713 n.
power to nominate successor, I. 714 n.
(*See* RENUNCIATION.)

RESTRAINT OF MARRIAGE,
gift on condition in, II. 587, *et seq.* (*See* CONDITIONAL LEGACIES.)

RESULTING TRUST,
on failure of appointment under a power, II. 805 n.

RETAINER,
by executor, etc., for his own debt, II. 258, *et seq.*
origin of this remedy, II. 258.
not abolished by Hinde Palmer's Act, II. 258.
nor enlarged, II. 258.
not affected by s. 10 of Judicature Act, II. 264 n.
he cannot retain against a creditor of superior degree, II. 259, III. 147 n.
he cannot retain for simple contract debt out of mortgage realized, II. 258 n.
he may retain out of assets received after a judgment for account, II. 259. III. 492 n.
but cannot retain after general administration order, III. 491.
his right to retain not lost by payment of money into Court, II. 260.
nor by balance order made against him, II. 258 n.
but the right is not allowed out of merely equitable assets, II. 261.
nor out of moneys in hands of receiver, II. 261.
unless received by executor before receiver appointed, II. 261.
for what debts he may retain, II. 262, *et seq.*
debts due to him as trustee, II. 262, *ibid.*, n.
as *cestui que trust*, II. 262.
by administrator, II. 927.
by administrator *durante minoritate*, II. 262.
by administrator *durante dementiâ*, II. 263.
by a creditor administrator, II. 263, 264 n.
by one of several executors, II. 262 n.
by executor of executor, II. 259, 263.
by executor of administrator, II. 264.
by executor to whom a debt is due jointly with another, II. 264.
for a partnership debt, II. 864.
by widow administratrix for loan to husband out of separate estate, II. 264.
by executor *de son tort*, I. 315, II. 264. (*See* EXECUTOR *de son tort.*)
case where representative of creditor is also of debtor, II. 265.
obligee executor of co-obligor may retain, II. 265.
a surety, executor of co-obligor, can retain, II. 265.
executor of testator surety to Crown paying debt has Crown's priority, II. 265, n.
damages on tort cannot be retained, II. 266.
secus, as to damages on contracts, II. 266, n.
executor cannot retain against co-executor, II. 266.
may retain out of balance found due from himself and co-executor, II. 266.
may retain for debt more than six years old, II. 266.
unless unenforceable by Stat. of Frauds, II. 267.
by executor for expenses of funeral, III. 537, 541.
for costs of taking administration, III. 537.
for payment of debts out of his own pocket, III. 537.
by executor for his own legacy, not allowed, II. 661.
by executor of legacy, for debt due to testator by way of set-off, II. 619, *et seq.*
quære, whether right of exists against specific legatee, II. 623.
cannot retain after appropriation of assets for legacy, II. 684 n.
of legacy to executor, by his executor, II. 158 n.
of funds to pay unsecured debts, II. 237 n.
presumes presentment, II. 244 n.
annuity, II. 662 n., 663 n.
by administrator pendente lite for his debt, I. 594 n.
form of plea, III. 537.
when executor may set off debt of husband against legacy to wife, II. 623.
effect of Married Women's Propety Act, II. 623.
by heir, II. 261 n., 262 n., III. 145 n.

REVERSION,
estates by, vest in executor, I. 828, II. 88, *et seq.*

REVIEW, COMMISSION OF,
what it was, I. 684.

REVIVAL. (*See* WILL, *republication*, CODICIL.)
of will not effected by destruction of another will revoking it, I. 227.
of adeemed legacy, II. 605.

REVIVOR OF SUITS. (*See* EXECUTION, JUDGMENT.)
new procedure in lieu of, under the Judicature Acts, II. 61, *et seq.*, III. 240, *et seq.* 468, 551.
no abatement by change of parties if cause of action survives, II. 91, III. 240, 485, 589, 624, 625.
nor by death of either party between verdict and judgment whether cause of action survives or not, II. 91. (*See* III. 242.)
where either party dies after judgment procedure governed by Ord. XLII. r. 23...II. 95, III. 240—242, 469, 550.
successor in interest may be made a party by order of judge, II. 91.
action may be continued against successor in interest, II. 91.
order for adding party may be obtained *ex parte*, II. 91.
service of, II. 91.
method of procedure, II. 92.
executor obtaining such order liable to costs *ab initio*, II. 94.
person entitled to proceed failing to do so, II. 92, 94.
law before Judicature Act, II. 93, 94. (*See* III. 624, 625.)
entry of judgment *nunc pro tunc*, II. 95.
by administrator, in the United States, II. 101 n.
after verdict, II. 102 n.
after judgment, II. 102 n.
by administrator *de bonis non* upon judgment for original executor II. 95, 101 n.
by personal representative, where administration revoked, I. 719.
renders presentment of claim unnecessary, II. 243 n.

REVOCATION,
of wills, I. 174, *et seq.*, 221—225. (*See* WILL, *revocation of.*)
of probate, I. 682, *et seq.* (*See* PROBATE, *revocation.*)
of letters of administration, I. 682, *et seq.* (*See* ADMINISTRATION, *revocation.*)
of share bequeathed to one of several tenants in common, effect of, II. 506
to one of several joint tenants, II. 505.
of appointment of executors, words which will effect, I. 287.
of appointment of executors not necessarily of same persons as trustees, III. 322 n.

RIOT,
leasehold premises damaged by, *quære* whether action for against Hundred survives to executor, II. 7.

ROMAN CATHOLICS,
former incapacity to be executors or administrators, I. 276 n.
charities for, II. 283, *ibid.*, n.

RULES,
of Probate Division, I. 384, 541.
of Supreme Court. (*See* INDEX OF RULES AND ORDERS.)

SAILORS. (*See* SEAMEN.)

SALE. (*See* PURCHASE, PURCHASER.)
power of, when an executor takes, I. 778, *et seq.*, 797 n. (*See* ESTATE, *quantity in possession*, POWER.)
difference between a power of, and a trust for, I. 778.
may be exercised by other executors when one refuses, II. 146, *et seq.*, 152 n.
what is such refusal, II. 147.
when may be exercised by survivors of several executors, II. 150.
power of sale to pay debts and legacies, III. 203 n., 208 n.
discretionary power executed by administrator *c. t. a.*, I. 336 n.
execution by administratrix after marriage, I. 708 n.
sale of personalty by executor, II. 132 n.
before probate, I. 354 n.
by order of court, II. 137 n., 138 n.
private or public, II. 133 n.

SALE OF LAND,
by order of Probate Court,
for debts, III. 166 n., 175 n., 177 n., 235 n., 251 n.
for distribution, III. 167 n.
for expenses, III. 172 n., 175 n.
irrespective of foreign assets, III. 134 n.
debt of administrator, II. 625 n., III. 133 n.
by administrator *d. b. n.*, I. 576 n.
by administrator *pend. lite*, I. 594 n., 611 n.
by ancillary administrator, I. 612 n.
by predecessor, deed by successor, II. 113 n.
application, when made, III. 168 n.
by whom made, III. 171 n.
what may be sold, III. 173 n., 179 n.
application of proceeds, II. 225 n., III. 138 n., 178 n.
denied, when, III. 180 n.
liability of surety for proceeds, I. 638 n.
on bond, I. 641 n.
devastavit, if unnecessary, II. 625 n.
removal for failure to sell, I. 707 n.

SANITY. (*See* LUNATIC.)
presumption of, I. 21.

SATISFACTION,
of debts by legacies, II. 609, *et seq.*
general rule, II. 609.
exceptions, II. 610—615.
when presumption counteracted by context, II. 615.
by parol evidence, II. 617.
recital of amount of debt by testator, II. 615, 616, 620.
of portions by legacies, II. 614—616.
distinction between, and ademption, II. 616 n., 646, *ibid.*, n.

SATISFIED TERMS, III. 122.

SAVINGS BANK,
when representation not necessary to depositor in, I. 551. (*See* also, I. 549.
deposit passed by what form of gift, II. 461 n., 469 n., 472 n., 486 n., 489 n.

SCANDALOUS PASSAGES,
in will may be expunged from probate, I. 455.

SCHOOL,
public elementary, gift of land for, exempt from Mortmain Acts, II. 291.
when gift for support or erection of, void under Mortmain Acts, II. 128.
legacies of books, etc., to endowed schools not liable to duty, III. 82.
gift for, is a charity, when, II. 304 n., 305 n., 317 n.

SCIRE FACIAS. (*See* EXECUTION, REVIVOR.)
semble, intended to be abolished by Judicature Act, III. 140 n.
formerly the method of reviving a judgment after death of testator, III. 551, *et seq.*
execution now obtained under Order XLII. r. 23 . . . II. 95, III. 552. (*See* EXECUTION and III. 241, *et seq.*)
against executor of a Judge to certify bill of exceptions, III. 6.
lies against heir for recognizance of ancestor, III. 140 n.
practice in the United States, II. 101 n., 103 n.
judgments revived by, II. 114 n., 225 n.
dispenses with presentment, II. 242 n., 243 n.

SCIRE FIERI INQUIRY,
nature and origin of, III. 548. (*See* REMEDIES.)

SCOTLAND. (*See* DOMICIL.)
testator domiciled in,
by 21 & 22 Vict. c. 56, s. 12, Scotch confirmation produced in Probate Court and sealed there to have the effect of probate, I. 434.
and executor has the power of an ordinary English executor, I. 435 n.
proof of Scotch law as to, I. 505 n.
native of, domiciled here,
by what law his will was construed before Aug. 6, 1861... I. 441, 442.
since Aug. 6, 1861... I. 446.
provision of Statute of Mortmain, as to lands in, II. 309.
Scotch heritable bond descends to heir, II. 2 n.
heir not put to election as to, II. 770.
right of relief of Scotch heir paying bond debts available against personalty in England, III. 147 n.

SEALED PACKETS,
cannot be delivered by executor unopened, I. 470.

SEALING. (*See* WILL, *form and manner of making.*)
of will not sufficient signature within Wills Act, I. 106.
on will, when necessary, I. 107 n.
unnecessary addition of, to will, I. 151 n.

SEAMEN. (*See* NUNCUPATIVE WILL.)
wills of, I. 69, 170—173, 473, *et seq.*
mode of executing, stat. 28 & 29 Vict. c. 72... I. 473, *et seq.*
made on same instrument as power of attorney, void, I. 69, 474.
so on different instrument, I. 70.
made as security for debt, invalid, I. 70.
in favor of creditor may be good, I. 70.
mere existence of relation of seaman and agent, will not annul, I. 70.
knowledge of contents must be shown, I. 70, 416.
exception in Wills Act as to nuncupative wills of, I. 170—173, 473, *et seq.*
who are "mariners or seamen" within these exceptions, I. 172.
when "at sea" to justify nuncupative will, I. 171 n., 172 n.
probate of,
provisions of stat. 28 & 29 Vict. c. 72... I. 473, *et seq.*
who are seamen and mariners within this Act, I. 473.
exempt from duty where testator dies in service of Her Majesty, I. 738.
when probate unnecessary, I. 547.
when made in favor of agent, I. 416.
merchant seamen, I. 478. (*See* I. 549.)
administration to, I. 547, *et seq.*
definition of, for this purpose, I. 547, *ibid.*, n.
where representation obtained by creditor, I. 547.
payment of debts where no representation, I. 548.
when representation not necessary, I. 547, 548.
exemption from stamp duty, I. 548.
deposit in seamen's savings banks, I. 549.

SECURITIES FOR MONEY,
when legacy of, specific, II. 442—450.
what passes by bequest of, II. 476, 489 n.

SECURITY,
when legatee must give, against contingent debts, II. 654.
when plaintiff must give for costs, III. 468.
by executors, statutes requiring, I. 623 n.
for poverty, I. 624 n.
non residence, I. 624 n., 625 n.
additional, I. 634 n.
by life tenant, when to be given, II. 706 n.
on payment of legacy to minor, II. 712 n.

SEDUCTION,
when action survives, II. 26 n.

"SEIZED,"
construction of word, II. 329 n.

SELECTION,
right of, by executor, II. 130.
right of legatee, of a certain number of stock or articles, II. 766.
power of, from a class, not exercised, II. 394—396.
of charitable use, power of, II. 318 n.

SEPARATE PROPERTY,
of wife, I. 869, *et seq.* (*See* HUSBAND AND WIFE.)

SEQUESTRATION,
writ of, suspended by death of person issuing, II. 96 n.

SERVANT,
executors of masters cannot enforce contract of service, II. 3 n., 38.
wages of, whether entitled to precedence of payment by executor, II. 222, *ibid.*, n.
how far extinguished by legacy, II. 613, *ibid.*, n.
legacies to, not entitled to priority of payment, II. 671.
who entitled under the description of "servants" in a will, II. 421.
when executor must dismiss, III. 327 n., 425 n.

SET-OFF,
in actions *by* executors,
provisions of Order XIX. r. 3... III. 454.
in an action by executor in his own name, defendant cannot set-off a debt due from testator, III. 455.
semble, decisions on old statutes of set-off will still apply except where the equity rule is different, III. 454.
rule in equity, III. 455 n., 456, 457.
rule in the United States, III. 476 n.
claims barred by non-claim *ibid.*, II. 235 n.
by limitation, III. 477 n.
by dis-allowance, II. 251 n.
acquired after decedent's death, III. 478 n.
when a counter-claim cannot be made, III. 455 n., 456
what constitutes an equitable set off, III. 456 n.
with respect to ground rent, III. 455.
judgments, III. 457.
in answer to the plea, the executor may give in evidence the advance of money by him *as executor*, to the defendant. III. 458.
in actions *against* executors, III. 532, 533 n., 563 n.
defendant cannot set-off a debt due to himself, III. 532.
debt barred by limitation, III. 570 n
in suits in equity *by* executors, III. 481, 482.
in suits in equity *against* executors, III. 611 n.
by executor against legatee,
for debt due to testator, II. 619—624 n.
quære whether right exists against specific legatee, II. 624.
cannot set-off after appropriation of assets for legacy, II. 687 n.
where executor may set-off debt due from husband to testator against legacy to wife, II. 623.
by administrator against husband of next of kin, II. 623.

SETTLED ESTATES ACTS,
proceeds of sale of land under are not converted into personalty, I. 785 n (*See* CONVERSION.)

SETTLEMENT,
when an executor or administrator will gain under Poor Law by residing on leasehold of testator, I. 771.
not gained by residence in a windmill not affixed to freehold, I. 852 n.
on wife,
effect of ante-nuptial to protect the property in her favor, I. 873
post-nuptial, I. 874.

SETTLEMENT.—*Continued.*
when void under Bankruptcy Act, I. 873 n., 874 n.
widow's claims under the Statute of Distributions barred by, II. 858.
voluntary under stat. 27 Eliz. c. 4 . . . I. 874 n.
to defraud creditors under stat. 13 Eliz. c. 5 . . . I. 874 n.
wife's equity to, II. 731, *et seq.* (*See* PAYMENT OF LEGACIES.)
strict, gift to daughters "to be settled on them strictly," II. 337.
executor or administrator not to be protector of in respect of estate as such, I. 771.

SEVERAL EXECUTORS. (*See* EXECUTOR AND CO-EXECUTORS.)

SEVERANCE,
words of, II. 810, *et seq.* (*See* TENANTS IN COMMON.)
what will effect, II. 821.

SHAREHOLDERS. (*See* SHARES.)
in public companies, liability of executors of, III. 250—253, 307.

SHARES. (*See* COMPANY.)
whether real or personal estate, II. 36—38.
action to recover price paid for on faith of fraudulent prospectus lies for administrator, II. 5.
in railway company when they must be converted, II. 701 n.
or stock of railway company not transferable by one of several executors, II. 144 n.
what passes by bequest of, II. 476.
when bequest of specific, II. 442, *et seq.*
when executor liable for contingent liability on, II. 654. (*See* II. 796 n., III. 238 n., 307.)
when executor liable for as such, when personally, III. 250—253, 307.
when specific legatee of entitled to have them fully paid up out of estate, II. 765 n., III. 269. (*See* also III. 250—253.)
liability on not a debt till call made, II. 796 n.
liability of husband for calls on wife's shares, III. 273.

SHEEP,
what passes by bequest of, II. 763. (*See* II. 741, III. 102.)

SHELLEY'S CASE,
rule in, whether it applies to personalty, II. 377 n.

SHERIFF,
action against, by executor,
for a false return in lifetime of testator, II. 4.
for removing goods, before testator (the landlord) was paid a year's rent, II. 5.
action against executor of,
does not lie for an escape, III. 228.
secus, upon a judgment for an escape, III. 229 n., 239.
lies in *assumpsit* for money levied and not paid over, III. 230 n.

SHROUD,
property in, I. 846.

SIGNATURE. (*See* WILL, *form and manner of making*, WITNESSES.)
before Wills Act, I. 103 n.
necessary in case of wills under Wills Act, I. 103.
of will by mark sufficient, I. 103—105, 114 n.
to what part of will signature must be affixed, I. 95 n., 107—112.
what is a sufficient signing for testator by "some other person," I. 105, 114.
where the will consists of several sheets, I. 109 n., 115.
of several clauses written at several times, I. 115.
acknowledgment by witness, I. 135.
acknowledgment by testator to witness, I. 120 n., 126 n.
indorsement of envelope, I. 108 n.

SIMPLE CONTRACT,
payment of debts by, II. 229, *et seq.* (*See* DEBT.)
distinction between debts by, and specialty debts abolished, II. 217.
person injured by *devastavit* is simple contract creditor, III. 606.

SLANDER,
action for, does not lie for executor, II. 3, 6, 26 n.
nor against him, III. 228.

SLATE,
writing will on, I. 159 n.

SLAVES,
compensation money for emancipation of, legal assets, III. 112 n.

SOLDIERS. (*See* NUNCUPATIVE WILLS.)
exception in Wills Act as to nuncupative wills of, I. 169.
who are within this exception, I. 171.
probate or letters of administration of, slain in battle or dying in service of Her Majesty exempt from duty, I. 738.
pay, etc., or not exceeding 50*l.*, how paid, I. 549.
prize money of deceased, I. 549, 550.
prize money of foreigners in the service of H. M., when paid without letters of administration, I. 550.
creditor of, taking out administration, I. 551.
priority of payment of their regimental debts, II. 191.
distribution of effects of, I. 551, II. 192.
do not change their domicil by service abroad, II. 922 n.

SOLEMN FORM,
probate in, I. 391, *et seq.* (*See* PROBATE, *manner of obtaining.*)

SOLICITOR. (*See* ATTORNEY, COSTS.)
making a will in his own favor, I. 62, 67 n., 162, *et seq.*, 413, 657 n., 662 n., III. 644.
witness to a will loses benefit of direction that he may charge as executor against the estate, II. 269 n., III. 426 n., 644.
his authority determined by the death of his client, II. 99.
has no lien on the original will of his client, I. 375.
priority in payment of debts, II. 189. (*See* III. 297.)
costs of where improperly employed by executor, II. 193 n., III. 313 n., 494.
negligence by,
when action for survives *for* executor, II. 12.
action for survives *against* executor, III. 222, 223.
not part of his business to choose a valuer for intending mortgagee, III. 348 n.
when executor liable for default of, III. 346, *et seq.* (*See* DEVASTAVIT.)
liability of executor to pay bill of, after taxation, III. 555.
executor, not entitled to costs of professional services, III. 425—428, 645.
unless incurred in a suit where he acts for himself and co-executors, III. 427 ibid., n., 644, 645.
entitled to costs of furnishing accounts, III. 601.
executor of,
must now deliver a bill before commencing action, III. 450.
the bill may be taxed, III. 450.
when executor liable to costs of taxation, III. 450.
claim of, must be presented, II. 231 n.

SON, ELDEST,
when younger child considered, II. 355, *et seq.*

"SOUND MIND AND MEMORY."
"sound memory" defined, I. 25 n.
unsound mind defined, I. 46 n.

SOVEREIGN. (*See* KING, QUEEN.)

SPECIAL ADMINISTRATOR,
may appeal as general administrator, II. 101 n.
succeeded in all rights by general, II. 113 n.

SPECIAL CASE,
executors may obtain opinion, etc. of Court by, III. 503.

SPECIALTY,
debts by, II. 211 n., 217. (*See* DEBT.)
distinction between, and simple contract debts, as to priority of payment abolished, by 32 & 33 Vict. c. 46 . . . II. 217.

SPECIFIC LEGACY,
definition of, II. 436, *ibid.*, n.
distinction between, and demonstrative legacy, II. 439.
and gift for specific purposes, II. 661 n.
executor's power to alien, II. 120, *ibid.*, n.
quære, whether executor can confer good title to, after assent on alienee, II. 120 n
nature and incidents of, II. 436, *et seq.*, 741 n.
of money, debts, etc., II. 440.
of stock, shares, etc., II. 442, *et seq.*
parol evidence as to, II. 448.
of goods in a particular place, II. 453, 465, *et seq.*, 762.
ademption of such, II. 637—639.
right in a legatee to select a certain number of a stock of articles, II. 766.
such as he pleases of a stock of articles, II. 766.
of debts and securities, II. 448—450.
bequests connected with the realty, II. 450—451.
bequests contained in a residuary clause, II. 452.
in a residuary clause enumerating particular things, II. 454.
bequests of general personal estate, II. 453.
residuary bequest to one for life, remainder over, II. 455—460.
bequest in the nature of, II. 440.
subject of, in all respects equally liable to testator's debts as the rest of his property, II. 438 n., 653, 661 n.
legatee entitled to interest on, II. 438 n., 741. (*See* INTEREST.)
when legatee entitled to increase of, II. 741, 762—766
bonuses occruing, II. 765.
by stat. 1 Vict. c. 26, s. 24, the will shall take effect as if executed immediately before the death of the testator, II. 762. (*See* I. 258—261.)
when bequest may be confined to the date of the will, II. 764, 764 n.
not to be sold by executor, without necessity, II. 765.
of an unopened packet, II. 766.
payment or delivery of, II. 457 n., 760, *et seq.* (*See* PAYMENT OF LEGACIES.)
quære, whether executor has right of retainer or set-off against, for debt due from legatee, II. 624.
executor's liability to exonerate, II. 765 n., III. 209, 267—270. Cf. III. 249—253.
ademption of, II. 437 n., 633, *et seq.* (*See* ADEMPTION.)
action at law lies for, after assent, III. 517.

SPECIFIC PERFORMANCE,
action by personal representative, II. 25 n.
against executor for, does not bind heirs, I. 336 n.

STAMPS. (*See* ESTATE DUTY, LEGACY DUTY, PROBATE DUTY, SUCCESSION DUTY.)
on bond, necessary administration expense, II. 194 n.

"STATEMENT OF CLAIM." (*See* REMEDIES.)
opinion of Court may be obtained on, under Trustee Relief Acts, III. 503.

STATUTE,
penal, action upon, does not survive against executor, III. 229.
of limitations, III. 563 n., *et seq.* (*See* LIMITATIONS.)

STATUTE MERCHANT,
estate by, goes to executor, I. 811.

STATUTE MERCHANT.—*Continued.*
liability of executor upon, III. 222, 223, 240.
description of, II. 205.
now obsolete, II. 205.
its rank as to payment by executor, II. 205, 207.
void for want of formalities, ranks as a bond, II. 207.
joint and several statute, II. 207.
for the payment of money at a future day, II. 207, 218.
on a contingency, II. 207.

STATUTE STAPLE,
estate by, goes to executor, I. 811.
liability of executor upon, III. 222, 223, 239
description of, II. 205.
now obsolete, II. 205.
its rank as to payment by executor, II. 205, 207. (*See* STATUTE MERCHANT.)
recognizance in nature of, II. 206.

STATUTES. (*See* STATUTE INDEX.)

STAY OF EXECUTION,
when it may be granted, III. 469.

STAY OF PROCEEDINGS,
after commencement of administration action, III. 615—617. (*See* ADMINISTRATION ACTION.)
defendant not entitled to, till plaintiffs give security for costs where one abroad and the other insolvent, III. 468 n.
Court will order, where executor sues without obtaining probate, III. 454.

STEP CHILDREN,
not included in gift to "children," II. 362 n.
to "relations," II. 395 n.
to "family," II. 406 n.

STEPMOTHER,
has no claim under Statute of Distributions, II. 903.

STIRPES, PER. (*See* PER CAPITA.)

"STOCK IN FOREIGN FUNDS,"
what passes by bequest of, II. 475 n.

STOCK IN PUBLIC FUNDS. (*See* SHARES, RAILWAY DEBENTURES.)
personal estate, II. 37.
transfer of, how to be made by executors, II. 38.
bank not bound to transfer till probate registered, II. 38.
may require all executors to join in transfer, II. 38, 144.
the stock does not vest in the devisee until the executor assents, II. 38, 679.
laches by neglect to invest legacies directed to be laid out in stock, II, 711.
what amounts to a specific legacy of, II. 442, *et seq.*
what passes by bequest of, II. 475, *et seq.*
rights of executors with respect to, II. 38, 679.
transfer at the bank into their names, II. 679.
where administrator *durante absentia* party to a suit, may be transferred into name of Paymaster General to abide order of Court, I. 597.
executor returning to be made party to such suit, I. 597.
dividends of. (*See* DIVIDENDS.)
not apportionable at common law, II. 43.
now apportionable by Apportionment Act, II. 43.
loss of assets by fall of, III. 336. (*See* INVESTMENTS.)
when executor liable for, III. 337.
bonus on Bank stock,
passes to legatee of capital, II. 764.

STOCK IN PUBLIC FUNDS.—*Continued.*
standing in name of lunatic executor, etc., how transferred, 13 & 14 Vict. c. 60... III. 599.
executor abroad, etc., III. 599.
East India, what authorized for trustee investments, III. 338, 339.

STOCK IN TRADE,
what passes by description of, II. 471 n.

STOCK OF RAILWAY COMPANY,
one of two executors cannot transfer, II. 144 n.
what words will pass it, II. 476. (*See* II. 636 n.)
gift of when specific, II. 442, *et seq.*

STOCK ON FARM,
what passes by description of, I. 839, II. 471.
legatee for life entitled to immediate delivery, II. 457 n
absolute interest when, II. 707 n.
should give inventory, II. 457 n.
accountable, II. 457 n.
included in what gifts, II. 460 n.

STOCKBROKER,
liability of executor for default of, III. 346—352.

STOCKHOLDER,
representative of, may vote on foreign stock, III. 135 n.

STOCKS,
transfer of by foreign executor, I. 436 n., II. 132 n.
domiciliary administrator, I. 436 n., II. 132 n.
what reduces wife's, to possession, II. 74 n., 75 n.
title of purchaser from representative, II. 136 n., 137 n.
inventoried as worthless, executor not chargeable, II. 183 n.
gift of, when specific, II. 442 n.
included in gift of property, II. 461 n.
what gifts, II. 462 n., 465 n.
gift of, include what, II. 476 n.
income or dividends of, II. 481 n.

STOP ORDER,
not obtainable, if probate stamp insufficient, I. 749 n.

STREAM. (*See* WATERCOURSE, ACTION, REMEDIES, TORT.)
action for obstructing, etc., II. 6, III. 228, 233, 234, n.

STRICT SETTLEMENT, II. 337. (*See* SETTLEMENT.)

SUB-LESSEE,
executor of, suing for rent accrued since testator's death must allege *quantum* of testator's estate, II. 40.

SUBPŒNA,
may be issued by Registrar of Probate Division for production of testamentary papers, I. 373.
of action lies against executor of man neglecting to appear on, III. 228.

SUBROGATION,
of administrator paying another's default, I. 630 n.
debt of supposed decedent, I. 679 n.
of administrator's surety against his estate, I. 642 n., 643 n., II. 227 n.
paying distributee, I. 643 n.
preferred debt, I. 643 n., II. 212 n., 214 n.
of representative, advancing for debts, II. 226 n., 227 n.
of surety's administrator, II. 227 n.
of children, allowing payment of mortgage out of personalty, II. 227 n
of relatives, advancing for support, II. 483 n.

SUBSTITUTED CODICIL,
revocation of prior codicil by, I. 219.

SUBSTITUTED EXECUTOR,
appointment of, I. 285.
in what cases he may be admitted to the office, I. 286.

SUBSTITUTED LEGACIES,
doctrine of, II. 602, *et seq.* (*See* CUMULATIVE LEGACIES.)
subject generally to incidents of original gift, II. 609, III. 95.

SUBSTITUTED LEGATEE,
for legatee dying before the legacy becomes vested, II. 386, 393, 394, 416, *et seq.*, 500—504, 708. (*See* LAPSED LEGACIES.)
when "heirs," "heirs and assigns," with "and" or "or" used, II. 499 n.
when "and issue" "or representatives," etc., used, II. 502 n.
issue or heir of related legatee, taking by statute, II. 512 n.
when substituted class take vested remainder, II. 540 n.

SUCCESSION DUTY, III. 39, *et seq.* (*See* LEGACY DUTY.)
for American statutes. (*See* SUCCESSION TAX.)
16 & 17 Vict. c. 51 (Succession Duty Act), III. 39, *et seq.*
interpretation of terms, III. 39.
what dispositions, etc., shall confer successions, III. 40—45.
duties on successions, III. 45—48.
on transmitted successions, III. 47, *ibid.*, n.
payable in respect of transferred interests, III. 48.
what are such interests, III. 48, 49 n.
on successions subject to charitable trusts, etc., III. 49.
payable by corporations, etc., taking real estate, III. 54.
when to be paid, III. 51.
paid by mistake, returned, III. 57.
a first charge on property, III. 59.
what persons accountable for, III. 60. (*See* III. 39, 90.)
provisions for life policies and *post obit* bonds, III. 49.
exemptions, III. 45 n., 50.
leaseholds not chargeable with legacy duty as personal estate, III. 50.
legacies payable out of realty, III. 34 n., 37 n.
interest of a succession in real property to be considered as an annuity, III. 51.
how annuity to be valued, III. 55.
how personalty to be assessed, III. 55.
properties may be separately assessed, III. 60.
rules for valuing land, etc., III. 52.
deductions allowed, III. 52, *ibid.*, n.
rule as to advowsons, III. 52.
as to property subject to beneficial leases, III. 53.
as to manors, mines, etc., III. 53.
real property directed to be sold charged as personalty, III. 54.
personalty to be invested in real property how to be charged, III. 55.
allowance for fines, etc., paid by successor, III. 54.
to donee of general power of appointment, III. 56.
for incumbrances, III. 55.
in respect of relinquished property, III. 57.
no allowance in respect of contingent incumbrances, unless they take effect, III. 57.
gifts free of duty, III. 90, *et seq.*
commissioners:
duties to be under care of, III. 45.
may compound duty, III. 58.
may receive duty in advance, III. 58.
may commute future duties, III. 58.
notice of succession to be given to, and return of property made, III. 61.
penalty on not giving notice to, III. 62.
on not paying duty, III. 62.
accounting party must verify accounts if required by, III. 62.
may appeal against assessment of, III. 62, 63.

SUCCESSION DUTY.—*Continued.*
receipt of, a protection to *bonâ fide* purchasers, III. 63.
court in suits for the administration of property to provide for payment of duty, III. 64.
summary proceedings for account and payment, III. 64.
limitation of time for recovering by Crown, III. 98.
real estate when discharged, III. 98.

SUCCESSION TAX,
American statutes, III. 1 n.
what property is subject, III. 1 n., 139 n.
what persons are subject, III. 4 n.
rate, III. 6 n.
interest, *ibid.*
appraisement, *ibid.*
collection, III. 7 n.

SUGGESTION by executor, etc., of the death of sole, or sole surviving, plaintiff, under C. L. P. Act, II. 93. (*See* EXECUTION, JUDGMENT, REVIVOR.)

SUICIDE. (*See* FELO DE SE.)
commission of, shortly after making a will no proof of insanity, I. 21

SUIT. (*See* REMEDIES.)

SUMMONS. (*See* ADMINISTRATION ACTION, ORIGINATING SUMMONS, REMEDIES.)
new trustee can be appointed and vesting order made on, III. 600.

SUPERSTITIOUS USES,
legacy or bequest to, void, II. 282—284.
what are, II. 282.
gifts to void by 1 Edw. VI. c. 14, vest in Crown beneficially, II. 284.
gifts to void outside the statute if charitable administered *cy près* II. 284.
if not result to next of kin or residuary legatee, II. 284, 285.

SUPERVISOR. (*See* OVERSEER.)
office of, distinguished from that of executor, I. 283.

SUPPLYING WORDS. (*See* CONSTRUCTION.)
for purposes of construction of a will, II. 332—337.

SUPPORT. (*See* MAINTENANCE.)
in house, includes repairs thereon, I. 651 n.
of wife and children, when child leaving home loses, II. 361 n., 383 n.
gift for, not gift of income, II. 463 n.
does not confer title, II. 383 n.
may require more than income, II. 483 n.
advanced by relatives, II. 483 n.
includes what, II. 483 n.
lapses when, II. 497 n.
charged on devise, II. 559 n.
allowance for, II. 865 n.

SUPPRESSION OF WILL,
indictment for, I. 374 n.

SURETY,
liability of executor of, III. 278.
as principal debtor, III. 133 n.
in joint and several bond, may retain out of his principal's estate, if his executor, II. 265.
whether a joint contract can be considered as several, in favor of a surety, III.
paying a joint or several bond, is only a simple contract creditor of his principal. II. 265, *ibid.*, n.
paying debt after death of principal can pray administration as creditor, I. 519.

SURETY.—*Continued.*
to administration bond, I. 515 n., 614, *et seq.*, 621 n., 622, 628—644 n. (*See* ADMINISTRATION, *bond.*)
when dispensed with, I. 618 n.
justification by, I. 619.
liability for administrator's debt, III. 132 n., 133 n.
for trust property, III. 137 n.
for debts collected as agent of principal administrator, III. 134 n.
for assets transferred to other jurisdiction, III. 135 n.
successive liability for devastavit, III. 353 n.
subrogation of, I. 642 n., 643 n., II. 227 n.
discharge by non-presentment, II. 234 n.
presentment as contingent claim, II. 253 n.
cannot compel presentment against principal's estate, II. 239 n.
may apply for revocation of administrator's letters, I. 708 n.
or set up their invalidity, I. 678 n.
whether must be resident in England when administrator abroad, I. 619, *ibid.*, n.
corporation accepted as, I. 623 n.

SURRENDER,
of a term,
one of several executors may accept, II. 145 n.

SURVIVAL,
of cause of action, II. 91, *et seq.*, III. 240. (*See* REVIVOR, EXECUTION.

SURVIVING PARTNER,
winds up partnership, III. 316 n.
administration by, III. 317 n.

SURVIVOR,
the word construed "other," II. 336, 814—815.
"not survive" construed "die in the lifetime of," II. 336.
of a class, gift to, II. 395.
vested or contingent remainder, II. 537 n.

SURVIVORSHIP. (*See* ACTION, HUSBAND AND WIFE.)
to what period to be referred, II. 812, *et seq.*
as to residue,
in case of several residuary legatees, II. 809.
of joint tenant, II. 809.
of tenants in common, II. 810—811. (*See* II. 506.)
of gift as to a class, II. 340 n., 343 n., 505, 816—820.
of several executors, II. 820,
as to legacy to several, where one dies before the testator, II, 505—509.
as to accruing shares, II. 508.
as to property of partners, I. 775, *et seq.*, II. 48.
and other joint undertakings, I. 776.
as to money on mortgage, I. 776.
as to executorship, II. 146, 148, *et seq.*, 592 n.
of one of two persons, who perish by shipwreck, or other common death, II. 497 n., 498. (*See* also I. 493, 555, II. 59, 582.)

SYNDICS. (*See* CORPORATION.)
appointed to receive administration, when corporation aggregate appointed executors, I. 270.
grant will not be made till appointment before court, I. 270 n.

TAIL. (*See* ESTATE TAIL.)

TAPESTRY, passes to the executor, I. 857. (*See* FIXTURES.)

TAX. (*See* SUCCESSION TAX.)
payment of taxes on land by executor, II. 197 n., 198 n.
preference as debt of testator, II. 198 n.

TAXATION. (*See* COSTS, MODERATION, SOLICITOR.)

TEAZLES,
whether they are emblements, I. 836 n. (*See* EMBLEMENTS.)

TECHNICAL WORDS,
effect of use of in a will, II, 329, 379 n.

TEMPORARY ADMINISTRATION. (*See* ADMINISTRATION.)
grant of, I. 577, *et seq.*, 601, *et seq.*

TENANT. (*See* LANDLORD AND TENANT, AND RENT.)

TENANT BY THE CURTESY,
right of executors of to emblements, I. 842.
in case of election, II. 769.

TENANTS BY THE ENTIRETY.
surviving spouse takes, I. 794 n.

TENANT FOR LIFE,
executor of,
liability for neglect to renew a lease, III. 276.
his right to rent, II. 42, *et seq.* (*See* APPORTIONMENT.)
to damages for breaches of covenant in the time of the deceased, II. 47.
paying compensation under Agricultural Holdings Act entitled to charge on holding for amount, I. 843.
right of to fixtures against remainderman, I. 862.
of personal property, remainder over, II. 456—458, 695, *et seq.*
a person taking the residue for life is entitled to the proceeds from testator's death, II. 695—697, 801.
difficulties in the application of this doctrine, II. 695—705.
where the bequest is of things *quæ ipso usu consumuntur*, II. 707 n., 708.
of wasting securities, II. 699, *et seq.*
of leaseholds sold compulsorily or under Settled Estates Act, II. 703 n.
where expenditure allowed by executor for preserving property, III. 503.
duty of executor to convert the property into authorized securities, II. 699—705, 801. (*See* III. 337—341.)
Rule in *Howe* v. *Lord Dartmouth*, II. 456—459, 701.
consequence of neglecting to do so, III. 342.
will not be ordered to bring fund into court in administration action unreasonably, II. 713 n.
inventory by tenant for life, II. 786.

TENANT FROM YEAR TO YEAR,
his estate goes to executors, I. 813.

TENANT IN TAIL. (*See* ESTATE TAIL.)

TENANT *PUR AUTER VIE*, I. 814. (*See* ESTATE *pur auter vie.*)

TENANTS IN COMMON. (*See* JOINT TENANTS.)
legacy given to,
what words make a tenancy in common, II. 401 n., 810—811.
gift to two or more as, and the survivors or survivor of them, II. 811, *et seq.*
effect of death of one before testator, II. 506, 810.
effect of revocation of gift to one of several, II. 506.
construction of gift to heirs as, II. 330.
personalty in common, representative takes, I. 794 n.
statute abolishing, joint tenancy II. 352 n., 353 n.

TENOR. (*See* EXECUTOR, *Appointment of.*)
executor according to the, I. 278—281.

TERM FOR YEARS. (*See* LEASE, ESTATE.)
trust, limited administration for assignment of, I. 605.
attendant on inheritance, III. 122.

TESTAMENT. (*See* WILL.)
definition of last will and testament, I. 4.
inofficious testaments, I. 44.
distinction between *testamentum* and *ultima voluntas*, I. 4 n.

"TESTAMENTARY EXPENSES,"
what included under, II. 187, and n.

TESTATOR,
declarations of, when admissible in evidence, I. 424. (*See* EVIDENCE.)
intention of, II. 327. (*See* INTENTION.)

THEN,
construction of word, II. 403 n., 514 n., 516 n., 520 n., 533 n.
to what period to be referred in a bequest to persons "then living," II. 812 n.

TIMBER. (*See* TREES.)

TIME,
from which a will speaks,
as to estate comprised in it, is from death of testator unless contrary intention appears by will (1 Vict. c. 26, s. 24), I. 5, 260, *et seq.*, II. 338, 444 n., 641, 762, *et seq.*
what will amount to contrary intention, I. 260 n.
construction of 1 Vict. c. 26, s. 24 . . . I. 263.
when a will is to be proved, I. 378, *et seq.* (*See* PROBATE.)
when executor becomes beneficially entitled to estate of testator, I. 769, 772—774.
when executor becomes liable for testator's debts, III. 589.
of vesting of legacies, II. 516, *et seq.* (*See* CLASS, CONSTRUCTION, LAPSED LEGACIES.)
of vesting of estate of executor or administrator, I. 759—764. (*See* ESTATE.)

TITHES,
lease of, goes to executor, I. 813. (*See* ESTATE, *quantity in possession.*)
when successor entitled to, of emblements, I. 841.
apportionment of rent-charges under Tithes Commutation Act, II. 44, 45.
debt for not setting out tithes lay for executor, II. 5, 6.
not against him, III. 200.
but he was liable for the value, III. 200.
due to wife's estate,
when they went to husband's executor, II. 59.
when executor was considered in possession of, I. 764.

TITLE,
of executor derived from will, I. 354.
but authenticated by probate, I. 351 n., 354, III. 464, *et seq.*
executor can confer, on assignee of assets, II. 120, *et seq.*
when executor can make good, to real estate, I. 777, *et seq.* (*See* ESTATE, *quantity in possession.*)

TOLLS,
of a lighthouse, lease of, held a chattel real, II. 37 n.
not liable to legacy duty, III. 77.
whether within Mortmain Acts, II. 126 n.

TOMBSTONE. (*See* MONUMENT.)
property in, I. 846, *ibid.*, n.
whether an allowable funeral expense, II. 168, 171 n., 172 n.

TONTINE,
no succession between subscribers to, within Succession Duty Act, III 49 n.

TORTS. (*See* ACTION, ESTATE, *quantity in action*, REMEDIES, EXECUTOR, LIABILITY.)
in testator's time,
action for when it lies *for* executor, II. 3, *et seq.*, 20 n.
lies where personal estate of less value, II. 4.

TORTS.—*Continued.*
instances of such cases, II. 4, 5.
no action lies generally for torts to person, II. 6.
instances of such, II. 6.
exceptions introduced by Lord Campbell's Act, II. 8—11.
by Employers' Liability Act, II. 12.
no action lies for breach of promise of marriage, II. 14.
action for, to freehold generally does not lie, II. 6, 7.
exception introduced by 3 & 4 Will. IV. c. 42 . . . II. 8. (*See* II. 8 n.)
action for, to chattels real, whether it lies, II. 8, 8 n.
in executor's time,
action for, lies for executor, II. 77, *et seq.*
whether he has been in possession or not, II. 77.
may sue in his own name or in representative character, II. 78.
or in both, II. 82.
in testator's time,
against executor, III. 228, *et seq.*, 287 n.
lies where damage to personal estate, III. 229, *ibid.*, n., 232 n., 234 n.
does not lie for torts to estate or person at common law, III. 228.
statutory exceptions, III. 229, 234.
actions may be brought against executors for torts to realty committed six months before testator's death within six months by stat. 3 & 4 Will. IV. c. 42 . . . III. 234, *et seq.*
remedy may sometimes be had in another form, III. 229, *et seq.*

TRADE,
interest on legacy where assets employed in by executor, II. 748.
profits of, carried on by executor, shall be assets in all cases, III. 102, 398, *et seq.*
how profits of a business are to be estimated, III. 398—402.
executors have no authority to carry on the trade of the testator, III. 305
what is meant by this doctrine, III. 311, 312, 495, 609.
difference between executor and administrator, III. 496.
where testator authorizes, III. 307, *et seq.*, 608, 609.
liability of executor continuing, III. 305—312, 495, 609.
liability of testator's estate, III. 307, *et seq.*, 495, 610.
rights of creditors of executor and testator *inter se*, I. 767 n., III. 305 n., 306 n., 306—309, 608—611.
proper procedure for creditor of testator, III. 309, 611.
procedure for creditor of executor, III. 608, 609.
executor's right of indemnity, III. 610.
whether creditors of executor or of testator entitled to conduct proceedings, III. 611.
sale of testator's business to a company, III. 504.
covenant not to exercise,
personal to testator, III. 225.
fixtures used in, to whom they belong, I. 855, *et seq.* (*See* FIXTURES.)

TRADE MARK,
action to restrain infringement of, lies for executor, II. 5, III. 481.
also for slander of, II. 5.

TRADE UNION,
when representation not necessary to member of, I. 551.

TRAITOR. (*See* WILL, *who is capable of making.*)
formerly incapable of making a will, 1. 91.
unless pardoned, I. 91.
may be an executor, I. 274.
might make a will as executor, I. 91.

TRANSFER,
of actions against executor to Chancery Division after an administration order, III. 452 n.
of administration actions to Bankruptcy, III. 619.
of actions from the County Court to the Chancery Division, III. 669.
of actions from the Chancery Division to the County Court, III. 669.
of actions from one County Court to another, III. 670, 671.
of foreign assets, III. 135 n.

TRANSMISSION,
of executorship, I. 293, *et seq.* (*See* EXECUTOR OF EXECUTOR.)

TRAVERSE,
of inquisition after *certiorari* by executor, II. 96, *ibid.*, n.

TREASURY SOLICITOR,
a corporation sole, I. 510.
administration granted to where crown entitled to personal estate of intestate, I. 510.
administration bond not given by but liable as if it were, I. 615 n.

TREES,
when they pass to the executor, and when to the heir, I. 833, 834, 834 n.
action for cutting, does not lie for executor, II. 6, 24 n. (*See* I. 843 n.)
when trespass *de bonis asportatis* may be maintained, II. 6, 7.
does not survive against executor, III. 233.
he is liable in an action for the value arising from the sale, III. 233.

TRESPASS. (*See* TORTS.)
action of,
did not lie *for* executor, etc., at common law, II. 4, 20 n., 24 n., 28 n. (*See* ACTION.)
stat. 4 Edw. III., II. 4.
lies now whenever the personal estate has been injured by a trespass, II. 4, 5.
does not lie at common law, for trespasses to the freehold or person of testator, II. 6.
stat. 3 & 4 Wm. IV. c. 42...II. 8.
when it lies, *de bonis asportatis*, for corn, grass, trees, etc., cut and carried away, II. 6.
whether it lies for torts to chattels real, II 8.
for torts in the time of the executor, II. 77, 86 n., 87 n.
before letters granted, II. 112 n.
to partnership realty, I. 793 n.
does not survive at common law, *against* executor, III. 228, 230.
for mesne profits, III. 231. (*See* MESNE PROFITS.)
amendment of law by stat. 3 & 4 Wm. IV. c. 42... III. 234, *et seq.*

TRIAL,
motion for new, cannot be made by executor before probate, II. 95.

TRINITY,
persons denying, formerly disabled from being executors, I. 276 n

TROVER,
lies *for* executor, upon conversion in time of testator, II. 4, 20 n., 27 n.
lies for executor or administrator of undischarged bankrupt against all but assignee, I. 762, 777.
by executor, where goods are converted after testator's death, II. 77, 78, 86 n.
how executor may declare, II. 77, 78. (*See* II. 82.)
against legatee, for taking legacy without assent, II. 679, 684 n.
does not survive *against* executor, III. 228.
but he may be sued on a conversion in his own time, III. 229.
when money had and received will lie, III. 229.
against foreign debtor, for conversion in other state, III. 134 n.

TRUST. (*See* TRUSTEES.)
when created by precatory words, I. 155 n., 157 n., 161 n.
undisclosed trusts when court will enforce, , I. 472, *ibid.*, n., II. 838.
parol evidence as to, I. 472 n., II. 838.
whether enforceable where *cestui que trust* witness to will, II. 838.
breaches of,
debts by simple contract, III. 606.
liability of executor of trustee for, III. 238.
what acts amount to, III. 321, *et seq.* (*See* DEVASTAVIT.)

TRUST.—*Continued.*
property held by deceased as trustee not liable to probate duty, I. 744, *et seq.*, 750.
goes to successor in trust, II. 161 n., III. 137 n., 138 n.
to survivor, I. 796 n.
to personal representative, I. 796 n.
is not assets, II. 182 n., III. 137 n.
debts as trustee, preferred, II. 214 n.
must be presented, II. 237 n.
arising from office of executor,
cognizance of courts of equity of, I. 355, III. 589.
liability of executor for breaches of, III. 321, *et seq.*
for sale, I. 778, *et seq.*, II. 120, *et seq.* (*See* ESTATE, *quantity in possession;* EXECUTOR, *power of.*)
difference between it and a power of sale, I. 778.
legacy in does not lapse by death of trustee in testator's life, II. 514
securities, III. 334, n., 337—341. (*See* INVESTMENTS.)
equity jurisdiction over, III. 511 n., 652 n.

TRUSTEES. (*See* LIMITATIONS, *Statute of*, TRUST.)
distinction between, and executors, III. 322, *ibid.*, n.
property bequeathed to executors as trustees,
taking probate is an acceptance of the particular trusts, II. 600, III. 321.
revocation of appointment as executors, no revocation of that as trustees, III. 322 n.
when legatee or executor declared trustee for other persons, I. 657—662, II. 406, 407, 416, 420.
vendor or vendee of land held a trustee, I. 784. (*See* CONVERSION.)
estates of inheritance vested in testator as sole trustee pass to his personal representative, III. 122. (*See* TRUST.)
in the United States:
executor as, administrator *c. t. a.* succeeds when, I. 324 n., 335 n., 336 n., 564 n.
removal of, I, 324 n., 722 n.
renunciation of, I. 324 n., 325 n., 331 n., 335 n.
of one office alone, I. 325 n., 329 n., 335 n., 336 n., 714 n.
acceptance of, I. 325 n., 329 n., 331 n., 336 n.
bond by, I. 627 n., II. 317 n., 717 n.
testamentary, jurisdiction to remove, I. 693 n.
causes for removal, I. 702 n., 704 n.
non-acceptance, I. 713 n.
removal of, does not revoke power of appointment of successor, I. 722 n.
executor in will as, codicil not, II. 152 n.
authority of co-trustees, II. 152 n.
executor as, by implication, of gift to church, II. 272 n.
of gift for life, II. 791 n.
discretion of, II. 314 n.
account by, required, II. 317 n.
appointed, to prevent failure of trust, II. 321 n., 322 n.
not where gift indefinite, II. 324 n.
payments by, II. 717 n.
infant trustees, order of the Court of Chancery in respect of the estates of, 13 & 14 Vict. c. 60, and 15 and 16 Vict. c. 55 . . . III. 598, 599.
lord chancellor may make vesting and other orders respecting lands or stock of lunatic trustees, III. 598.
out of the jurisdiction of the court, or uncertain whether living or dead, or refusing to transfer stock, etc., III. 599.
Act for relief of (10 & 11 Vict. c. 96, and 12 & 13 Vict. c. 74), III. 496—502.
payment of money into court under, III. 496, 497.
funds under 500*l.*, III. 498.
foreign bonds, III. 498.
charity funds, III. 498.
procedure under, III. 498, 499.
investment of funds paid in, III. 499.
application for payment out, III. 499.
costs how paid, III. 500.
trustees should not pay in money unnecessarily, III. 500.

TRUSTEES.—*Continued.*
22 & 23 Vict. c. 35 (Lord St. Leonards' Act), application under, to court as to management of trust property, III. 502.
methods of procedure under this act, III. 502, 503.
expenditure authorized out of capital for preserving property, III. 503, 504.
sale of testator's business to a company, III. 504.
summons proper procedure for appointing new trustee, III. 600.

TURKEY. (*See* DOMICIL.)
will of British subject domiciled in, I. 441.

TURNPIKE BONDS,
whether real securities, III. 346 n.
whether they ought to be converted, II. 458 n.
whether within Mortmain Acts, II. 291.

UNACCRUED DEBTS,
presentment of, statutes, II. 237 n., 245 n., 253 n.
retention of funds to secure, statutes, II. 237 n.
rent up to time of presentment, II. 253 n.

UNATTESTED PAPER. (*See* INCORPORATION.)
incorporation of with will, I. 139, *et seq.*

UNBORN CHILD,
refusal to probate will binds, I. 674 n.
revocation of probate does not affect, I. 711 n.

UNCERTAINTY,
inconsistent wills of same date void for, I. 219.
legacy for "next of kin, *or* heir-at-law," void for, II. 385.
gift of "handsome gratuity" to executor, void for, II. 600.
appointment of executor, void for, I. 287.

UNCLE,
his degree as next of kin, II. 905, 912 n.
grandfather preferred to him, I. 500, II. 905.
great grandfather shall share with him in distribution, II. 905.
so shall nephews and nieces, II. 905.

UNDUE INFLUENCE. (*See* WILL, INFLUENCE.)

UNINCORPORATED SOCIETIES,
cannot take devise, when, II. 271 n., 272 n., 321 n.
when, by trustee, I. 272 n.
when, as trustee, I. 272 n., 321 n.
subsequent incorporation, II. 272 n., 274 n., 312 n., 321 n.

UNITED STATES,
preference of debts to, II. 213 n., *et seq.*
can take by devise, when, II. 274 n.

UNITED STATES COURTS,
local letters necessary to action in, I. 431 n.

UNIVERSITIES,
exception in the Statute of Mortmain in favor of, II. 290, 309, 326.

UNLIQUIDATED CLAIMS,
must be presented, II. 237 n.

"UNMARRIED,"
what is meant by, in a legacy, II. 363, 591, 592.

UNSOUND MIND,
person of, (*See* LUNATIC.)

USE AND HIRE,
of horse, which has been taken by testator, action lies against his executor for III. 230.

USE AND OCCUPATION,
action for,
lies against executor, who has had the mesne profits up to the day of the demise in ejectment, III. 231.
but not after, III. 231.
relief in equity, III. 231.
executor is personally liable in, III. 232, 259 n..
executors chargeable with rent for, when one occupies testator's buildings, II. 125 n.

USURY,
on loans by executor on mortgage, III. 365 n.
on loan made by one co-executor, II. 154 n.
allowance of payment, in account, III. 366 n.

UTENSILS,
what passes by description of, in a will, II. 470, 471 n.

VENDOR AND PURCHASER,
property contracted for by testator will pass by description of it as his actual property, II. 495.
conversion in equity of the estate contracted for, I. 784, 785, III. 265.
liability of executor of vendee to complete the purchase, III. 265.
when executor proper person to convey estate contracted to be sold, III. 265.
action by executor on contract, II. 25 n.
marshalling assets, with respect to vendor's lien, III. 210. (*See* III. 158.)

VENUE. (*See* COUNTY COURT, TRANSFER.)

VESTED LEGACIES,
doctrine of, II. 495, *et seq.*, 514, *et seq.*, 546 n. (*See* LAPSED LEGACIES.)
rules for determining whether vested or contingent, II. 515, *et seq.*, 555 n.
divesting of vested shares, II. 356.
vested or contingent devises, II. 548 n.
when "vested" means vested in possession or "payable," II. 336, 557.
when "indefeasible," II. 336 n., 557.

VESTING,
order may be obtained on summons, III. 600.
time of. (*See* CLASS, CONSTRUCTION, DISTRIBUTION, LAPSED LEGACIES.)
of property of deceased in executor or administrator, I. 759—763. (*See* ESTATE.)
difference between chattels real and personal, I. 764.
Court leans in favor of early vesting, II. 340 n., 812 n.

VILLEIN,
was capable of being executor, I. 273 n
for years was a chattel real, I. 807 n.

VOID AND VOIDABLE,
grants, distinction between where probate or administration revoked, I. 715, *et seq.*

VOLUNTARY CONTRACT,
executor not bound to complete, III. 277.
bond or covenant postponed to debts, II. 217.
but must be paid before legacies, II. 217, 652.

VOLUNTARY SETTLEMENT,
property passing under when liable to probate duty, I. 732, III. 37 n.

WAGER OF LAW,
abolished, III. 517

WAGES,
debt due to servants, clerks, or workmen, whether entitled to priority, II. 215 n., 222.
how far extinguished by legacy, II. 613.
must be presented, II. 236 n., 241 n.

WAIVER,
of lease by executor, I. 814, III. 257, *et seq.* (*See* RENT.)
of limitation of contest of probate, I. 709 n.
of notice etc., on minor, II. 101 n.
of filing of inventory, II. 181 n.
of preference, by accepting dividend on claim, II. 216 n.
of defence of non claim, II. 243 n., 246 n.
of presentment of claim, by administrator, II. 246 n., 247 n
of rejection of claim, II. 248 n.
of condition subsequent to bequest, II. 583 n.

WARRANT OF ATTORNEY,
when executor may enter up judgment on, II. 97.
when judgment may by entered against a testator on, III. 555.

WARRANTY,
action for false, continued by administrator, I. 101 n
none at administrator's sale, II. 133 n.
presentment of claim on covenant of, II. 238 n.

WASTE,
by executor in killing game, etc., I. 832.
action for, does not survive to executor at common law, II. 6 n. (*See* TORT.)
nor against him, III. 232.
but an action lies for the benefit arising from the sale of trees cut, II. 6, 20 n., III. 232.
or ore dug, III. 232. (*See* III. 229 n.)
so a suit for equitable waste, III. 233.
by limited owner, I. 834, nn. (*See* III. 232 n.)
whether tenant for life liable for permissive, III. 232 n.

WASTING SECURITIES,
conversion of, II. 699, *et seq.* (*See* CONVERSION.)

WATERCOURSE,
action for diverting, does not survive to executor at common law, II. 6, 24 n.
nor against him, III. 228.
exceptions introduced by 3 & 4 Will. IV. c. 42 . . . II. 8, III. 234.
so of an action for polluting, III. 234 n.

WATERWORKS,
shares of, whether realty or personalty, II. 37.

WEAKNESS,
of understanding,
what is sufficient to be a ground of incapacity, I. 46 n., 48.

"WEARING APPAREL,"
gift of, furniture does not include, II. 468 n.
does not include watch, II. 490 n.
for life, absolute, II. 707 n.

WEST INDIES. (*See* COLONIES.)
commission allowed to executors in, III. 430.

"WHATEVER,"
of property remains, II. 462 n.

"WHEN,"
as determining whether legacy vested or contingent, II. 514 n., 516 n., 520 n.

WIDOW. (*See* HUSBAND AND WIFE.)
her common law right to a third of her husband's goods, I. 2.
republication of will by, I. 75.
will made by, during coverture, revoked by her surviving, I. 72 n., 89, 248 n.
unless made under a power, I. 90.
or as executrix, I. 72.
her right to administration, I. 489, 531 n., 563 n., 593 n. (*See* ADMINISTRATION, *grant of letters.*)
her right to her chattels real after her husband's death, I. 822, *et seq.*
choses in action, II. 55, *et seq.*
separate property, I. 869, *et seq.*
paraphernalia, I. 880, *et seq.*, III. 215.
legacy to,
in restraint of marriage, II. 587, *et seq.*
in lieu of dower, considered as a purchase, II. 669, 670 n.
does not carry interest from testator's death, II. 743.
a married woman by the description of "widow," II. 433.
her right to dower, II. 771.
how affected by Dower Act, II. 771.
questions of election in effect abolished by, II. 771.
her right to dower not affected by 3 & 4 Will. IV. c. 104...III. 146 n.
her rights under the Statute of Distributions, II. 854, *et seq.* (*See* DISTRIBUTION.) (*See* II. 840 n.)
a child shall not bring in his advancement for her benefit, II. 881.

WIDOWER. (*See* ADMINISTRATION, HUSBAND AND WIFE.)
legacy to may be on condition restraining marriage, II. 590 n

WIFE. (*See* HUSBAND AND WIFE.)
capable of being legatee, II. 477.
bequest to, whether it extends to after-taken wife, II. 371. (*See* II. 431, 432.)
to divorced wife, II. 372.
not being a lawful wife, II. 432.
not entitled under gift to relations, II. 397.
nor to next of kin, II. 398.
who entitled under gift to her next of kin as if she had died unmarried, II. 400 n.

WILD'S CASE,
rule in, II. 352, 377 n.

WILFUL DEFAULT,
accounts ordered on footing of, III. 435, 601, *et seq.* (*See* REMEDIES.)
executor must be charged with, to be liable on a *devastavit*, III. 333. (*See* III. 115 n.)

WILL.
mutual, I. 9, 174, 236. (*See* MUTUAL WILLS.)
duplicate, I. 205, 375. (*See* DUPLICATE WILLS.)
contingent, I. 231. (*See* CONTINGENT WILLS.)
nuncupative, I. 168, *et seq.* (*See* NUNCUPATIVE WILLS.)
made in jest, I. 151 n.
of seaman or marine, I. 473, *et seq.* (*See* SEAMAN.)
of soldier, I. 169, 473. (*See* SOLDIERS.)
may be deposited during lifetime of testator under control of court, I. 378.

OF PERSONAL PROPERTY,
power of making, has existed from earliest period, I. 1.
including terms for years, I. 2.
not at common law of the whole, unless testator died without either wife or issue, I. 2.
writ *de rationabili parte bonorum* for wife and children, I. 2.

WILL.—*Continued.*
query, whether this was the general law or a custom only, I. 3
the law now altered, as a man may bequeath the whole, I. 3.
termed *testamentum*, I. 4 n.
definition of last will and testament, I. 4.
operates on property acquired since the date of will, I. 5. (*See* I. 260, *et seq.*, II. 339, 641.)
distinction between will of personal property and will of lands in this respect before Wills Act, I. 4.
in strictness cannot exist without the appointment of an executor, I. 6. distinction between, in this respect, and a codicil, I. 6.
the bare nomination of executor will make it a will, I. 268. (*See* WILL OF LAND, *infra.*)
need not originate with testator if he understand and adopt one proposed to him, I. 56 n.
its nature,
different from a deed, though it be sealed, I. 8, 94 n., 150 n.
in all cases a revocable instrument, I. 9.
cannot be joint or mutual, I. 9.
whether such a will can be enforced in equity as a compact, I. 174—176.

WHO IS CAPABLE OF MAKING, I. 11, *et seq.*
aliens, I. 12.
the king or queen, 1. 14.
persons incapable from want of discretion, I. 16, *et seq.*
infants, I. 16. (*See* INFANT.)
idiots, I. 17.
who are considered so, I. 17.
will made by, void, though properly made, I. 18.
deaf and dumb, I. 18.
deaf, but not dumb, I. 19.
dumb, but not deaf, I. 19.
blind persons, I. 19.
what formalities necessary, I. 19, 20, 414.
persons who cannot read, I. 20, 44.
lunatics, I. 20, *et seq.* (*See* LUNATIC.)
persons who have outlived their understanding, I. 44.
incapacity from old age, I. 44, 45.
persons *in extremis*, I. 48.
persons of weak understanding, I. 48.
persons drunk, I. 50.
habitual drunkards, I. 50.
part of a will established, and part not, in cases of incapacity before Wills Act, I. 52.
a will established, though attesting witnesses speak to incapacity, I. 43, 144, 410.
inofficious testaments, I. 44.
persons incapable from want of liberty or free will, I. 52, *et seq.*
will obtained by *force*, I. 53.
will obtained by *fear*, I. 53.
what is the sort of fear to annul, I. 53.
will obtained by *fraud*, I. 53.
what is the sort of fraud to annul, I. 54.
cannot be set aside in equity, I. 54, 657. (*See* PROBATE, *revocation.*)
will obtained by *importunity*, I. 55.
the legal acceptation of the word, I. 55.
made by interrogatories, good, but difficult to prove, I. 56,
will obtained by *influence*, I. 56—65, 80, 162, 412, 657 n.
what sort of influence will invalidate, I. 57, 166.
may be good as to some parts, and bad as to others, I. 61.
will of *seamen*, I. 69, 473, 478. (*See* SEAMEN.)
made on same instrument with a warrant of attorney, bad, I. 69, 474.
or on a different instrument, 1. 70.

WILL.—*Continued.*
made as security for debt, void, I. 70.
but a will made in favor of his creditor may be good, I. 70.
will of *feme covert*, I. 70—90. (*See* HUSBAND AND WIFE.)
will of *alien*, I. 12 n., 13 n.
persons incapable from criminal conduct, I. 91.
traitors and felons, I. 91. (*See* TRAITOR, FELON.)
outlaws, I. 91. (*See* OUTLAW.)
persons excommunicate, I. 92.
persons guilty of crimes short of felony, I. 93.

FORM AND MANNER OF MAKING, I. 94, *et seq.*
difference between formalities before and since stat. 1 Vict. c. 26. . . I. 94.
presumption as to whether a will without date was made before or since the Act came into operation, I. 101.
writing,
must be in, I. 95.
only formality necessary before 1 Vict. c. 26. . . I. 94.
or printing, I. 159 n.
signature, I. 103—115.
before Wills Act, I. 103 n.
necessary in case of wills under Wills Act, I. 103.
how to be made under Wills Act, I. 103—115.
under American statutes, I. 95 n., 107 n.
must be made at the foot or end thereof by the testator, I. 103.
or by some person in his presence, I. 103.
what is sufficient signature by such person, I. 106, 114.
when signature valid as being at the foot or end, I. 107—112.
when signature in *testimonium* clause, I. 110 n.
by mark sufficient, I. 104, 105.
signature under assumed name held sufficient, I. 106.
sealing not sufficient, I. 106.
whether mere acknowledgment of a signature suffices, I. 115.
where will consists of several sheets, I. 109 n., 115.
of several clauses written at several times, I. 115.
blank spaces in body of, unobjectionable, I. 113.
seal, I. 9 n., 107 n.
date, presumption as to, I. 4 n., 102 n.
attestation, I. 115—147.
attestation clause, I. 133 n.
in case of wills of personalty made before 1st Jan., 1838. . .I. 115 n.
to wills made on or after 1 Jan. 1838. . .I. 116.
what is a sufficient acknowledgment of signature of testator to the witnesses, I. 119—124.
how and when the witnesses must attest, I. 97 n., 125, 137 n.
in the United States,
"credible witnesses," I. 117 n., 118 n.
competent witnesses are executors, I. 119 n.
not legatees, I. 119 n., II. 273, *et seq.*, 276 n.
must attest *after* testator has signed or acknowledged, I. 125.
both witnesses must be present, I. 125, 129 n.
witnesses must attest in presence of testator though not of each other, I. 116 n., 117 n., 125, 128—139 n.
what is the presence of a testator, I. 130, 131.
form of, not necessary but desirable, I. 133.
by marksmen sufficient, I. 134.
semble, initials sufficient, I. 135 n.
with a guided hand sufficient, I. 135.
but not by seal, I. 135.
acknowledgment of signature by witness not sufficient, I. 135.
must be either name of witness or mark intended to represent it, I. 136.
in what part of the will the witnesses must subscribe, I. 136.
effect of evidence of attesting witnesses as to the circumstances of attestation, I. 144—146,

WILL.—*Continued.*
application of maxim *omnia praesumuntur rite esse acta*, I. 145.
witnesses' names must be subscribed for purpose of attesting testator's signature, I. 147.
unattested papers referred to by will, I. 139.
a will cannot create a power of disposition by a future unattested paper, I. 143.
of will written on several sheets, I. 138.
casual omissions, etc., in
whether they may be supplied in the probate, I. 421.
form, I. 147—154.
testamentary form not necessary, I. 147.
deed poll or an indenture may operate as, I. 149 n.
the supposed exercise of a power may operate as a mere will will, I. 150.
document in form of will if expressed not to be meant as such not operate as will, I. 154.
testator need not intend a testamentary act, I. 148.
testator in a subsequent paper, etc., *he has* bequeathed, I. 154.
but the instrument must depend on the death of testator for consummation, I. 154.
there must be *animus testandi*, I. 151 n.
onus of proof of *animus testandi*, I. 153.
will made in jest, I. 151 n.
several instruments of different natures, may constitute a will, I. 139—142 n., 148—155 n., 154.
and probate may be granted to all the executors mentioned in the several instruments, I. 154 n.
governed by what local law, I. 679 n.
language, I. 155, 156.
wishes and requests sufficient, I. 155.
general doctrine as to what precatory words create a trust, I. 155 n.
may be in any tongue, II. 156.
how foreign language to be regarded, I. 157.
effect of translation in probate, I. 668, 669.
materials, I. 158.
will written in pencil, I. 158, 159 n.
rules as to alterations in pencil, I. 160.
written on slate, I. 159 n.
on several sheets, I. 138—142 n., 150 n.
codicil, part of will, I. 6 n.
may validate other part, I. 142 n.
who may be the writer, I. 162, *et seq.*, 413—415.
legatee, I. 162—167.
attorney legatee, I. 162—167.
true doctrine as to proof of wills when so prepared, I. 164—167, 412 n.

PUBLICATION OF,
none requisite under the Wills Act, I. 99, 124.
when required in the United States, I. 124—129 n.
reading to witness, I. 132 n.

CONTENTS OF,
knowledge of, by testator formerly presumed on proof of signature, I. 412. (But *see* I. 412 n.) (*See* FRAUD.)

REVOCATION OF, I. 174, *et seq.*
revocable nature of a will, I. 174.
whether mutual wills revocable, I. 174—176.
covenant not to revoke, I. 177.
not affected by subsequent insanity of testator, I. 21 n.
where legatee has been induced by will to render services to the testator, I. 178 n. (*See* III. 276.)
dependent relative revocation, I. 199, *et seq.*, 230.
enactments in 1 Vict. c. 26, respecting, I. 178.

WILL.—*Continued.*
in the United States,
animus revocandi necessary, I. 174 n.
intention alone insufficient, I. 174 n., 179 n., 189 n.
testator's declarations of intent, I. 419 n., 425 n.
statutory method must be followed, I. 179 n.
American statutes, I. 179—183 n.
of a second will revoking an earlier will, will not revive the first, I. 227.
1. *By destruction, burning, tearing, cancellation, or obliteration,*
to what cases the stat. 1 Vict. c. 26, extends, I. 185.
every act done to a will after Jan. 1, 1838, must be in compliance with the statute, though the will be made before that date, I. 185.
at what time alterations without date shall be presumed to have been made, I. 186 n., 187.
declarations of testator when admissible to rebut presumption, I. 186 n., 416.
what shall amount to, if done before the 1st Jan. 1838, I. 187.
what shall amount to if done after that date, I. 188—193.
cancellation by striking through with a pen not sufficient, I. 188 n.
"otherwise destroying," meaning of, I. 188.
must be intention and actual destruction, I. 189—193.
symbolical destruction not sufficient, I. 188 n.
effect of erasing signature, I. 188 n., 189 n., 191.
inchoate act not a revocation, I. 191.
must be in testator's presence and by his direction, I. 193.
quære, whether there can be ratification where proper formalities not observed, I. 194 n.
partial revocation,
may be effected by mutilation, I. 194.
intention of testator governs extent of operation, I. 194.
evidence of intention how shown, I. 194.
when effected by obliteration, interlineation, or alteration must be executed in like manner as will, I. 196.
unless obliteration complete, I. 197.
evidence *aliunde* not admissible in such case, I. 197.
consequences of complete obliteration with unattested substitution, I. 197.
the acts prescribed for revocation must be done *animo revocandi*, I. 192 n., 198.
presumption of law as to acts of cancellation and obliteration, I. 199.
doctrine of dependent relative revocations, I. 199, *et seq.*, II. 229.
evidence *aliunde* admissible in such case, I. 198.
cancellation under mistake of law, I. 203.
no revocation by will made under mistake of fact, I. 204.
when the second gift fails by incapacity of legatee, I. 204.
when destruction of will is of codicil, I. 204.
of one of duplicate wills, I. 205.
of a codicil, is so of an interlineation in a will to same effect, I. 206.
proof of mutilation, etc., I. 207.
if it be found mutilated in testator's custody, the presumption is that he mutilated it *animo revocandi*, I. 207.
so if it cannot be found, I. 207.
so where the testator has the custody of one of two *duplicates*, I. 208.
a will unduly cancelled or destroyed, may be established, I. 209.
so if cancelled by testator, when *non compos*, I. 51, 199 n., 210, 461.
how admitted to probate, I. 461.

WILL.—*Continued.*
in the United States,
by alterations and erasures, I. 161 n., 162 n., 183 n., 196 n.
by mutilation or obliteration, I. 184 n., 188 n.
strengthened by testator's own declaration, I. 186 n. (But *see* I. 190 n., 208 n.)
intention may be shown by parol, I. 187 n.
unperformed intention or direction, insufficient, I. 189 n.
verbal declaration or request insufficient, I. 190 n., 191 n., 228 n.
by nuncupative will, I. 168 n., 185 n.
by cancellation or destruction, I. 193 n., 194 n.
presence of testator, I. 193 n.
in fraud of testator, I. 210 n.
sanity of testator, I. 193 n., 199 n.
mistake of testator, I. 204 n., 221 n., 229 n.
unperformed intention as to new will, I. 201 n.
partial cancellation, I. 194 n., 195 n.
presumption as to alterations, I. 196 n.
as to cancellation, I. 202 n.
from place among waste papers, I. 207 n.
as to lost wills, I. 207 n.
from testator's knowledge of its loss, I. 208 n.
parol evidence of contents of will lost after testator's death, I. 209 n.
2. *By a subsequent testamentary disposition*, I. 210, *et seq.*
last will operative to exclusion of prior contrary or inconsistent will, I. 211, 212 n., 214 n., 230 n.
prior will revoked by subsequent non-appearing will, I. 211.
in such case evidence must be most clear of existence of second will, I. 211.
and contents of lost will must be known, I. 217.
no revocation effected unless the two are inconsistent, I. 212.
or unless the other be a substantive will, but *quære*, I. 213.
effect of appointment of executors, I. 215.
a paper disposing of the estate, without making an executor, revokes a prior will though appointing executors, I. 215.
effect of express revocatory clause in subsequent will, I. 215.
codicil revoking bequests but not appointment of executors does not revoke will, I. 215 n.
not affected by mere fact of a later will existing, I. 216.
though it be found to be different if particulars unknown, I. 216.
a later will of which nothing was known but that it was headed "last will," no revocation, I. 217.
nor by mere use of words "last will," I. 213 n., 218.
intention of testator, sole guide, I. 218.
two inconsistent wills of the same date, I. 219.
without any date, I. 219.
two inconsistent clauses in a will, I. 219.
duplicate wills of same date, I. 205 n.
revocation of prior disposition, by a subsequent *substituted* one, I. 219.
parol evidence as to testator's intention, I. 220.
revocation by unfinished subsequent disposition, I. 221.
by a codicil, I. 212 n., 216 n.
not affected by a subsequent disposition made under a mistake of fact, I. 221—224.
apart from Wills Act a question whether on the revocation of a later will, a former uncancelled will is revived, I. 226, 227 n., 228 n.
intention to revoke must be clear, I. 8 n.
whether will executing a power revoked by subsequent will, I. 224, 225.
semble general revocation does not necessarily revoke such will, but it must be shown that it is unreasonable it should, I. 226 n.

WILL.—*Continued.*
but if a foreign executor has to bring a suit here, there must be administration *ad litem*, I. 429, III. 514.
a will made abroad, of property here, must be proved here, I. 433.
Scotch confirmation produced in Probate Court, and sealed there to have the effect of probate, I. 434.
Irish probates to be of like force, as English probates, being resealed, I. 435.
will made here, of property in the colonies, I. 438.
the grant of probate here does not extend to property abroad, though the rights of the executor do, if the testator was domiciled here, I. 436.
the validity of the will of a foreigner depends on the law of the place of domicil, I. 439.
so of the will of a British subject *domiciled* out of England before stat. 24 & 25 Vict. c. 114...I. 439.
practice to follow the grant of the court of domicil, I. 442.
wills made by British subjects out of the kingdom to be admitted if made according to the law of the place where made, or where testator was domiciled, or had domicil of origin, stat. 24 & 25 Vict. c. 114... I. 446.
wills made by British subjects in this kingdom to be admitted if made according to local law, I. 447.
change of domicil not to invalidate will, I. 447.
an executor may sue here in respect of foreign assets without a foreign probate, I. 438.
of will under power, when necessary, I. 470.
of lost will, I. 456.
of will cancelled by fraud or by testator while *non compos*, or become illegible, I. 459.
of will directing certain sealed packets to be delivered by the executors unopened as directed, I. 470.
holder of will may be ordered to produce it in the Probate Court on summary process, I. 373.
he cannot dispute the jurisdiction, I. 375.
duplicate wills and all testamentary papers must be brought into the Probate Court, if required, I. 375.
how far original will may be referred to, to correct inaccuracies in, I. 668—671.
place of deposit for all wills under the control of the Court of Probate, I. 375.
when and how they can be got out, I. 375, 376. (*See* I. 466 n., 469.)

CONSTRUCTION OF,
jurisdiction of courts of equity, I. 361, III. 488.
general rules of construction, II. 327, *et seq.* (*See* CONSTRUCTION, LEGACY, WORDS.)
must be according to the law of the place where the testator died domiciled, II. 339. (*See* also I. 437, *et seq.*, *ibid.*, n.)

OF LAND,
until the Statute of Wills, could not be made, I. 1.
strictly not a testament, but an appointment, I. 4.
termed *ultima voluntas*, and not *testamentum*, I. 4.
before 1 Vict. c. 26, no after-purchased lands could pass by, I. 4, 259.
true reason of this, I. 5 n.
alteration of law by stat. 1 Vict. c. 26 . . . I. 5, 6, 260.
revocation of, by alteration of the estate devised, I. 262, *in notis.*
formerly, effect of republication of, important, I. 259.
ought not to be proved in the Probate Court, I. 468.
unless where executors are appointed, I. 469. (*See* I. 89, 269 n., 470 n.)
or where realty equitably converted by will. I. 468 n.
heir must be cited when will is proved in solemn form affecting real estate, I. 401, 666.

MIXED WILL OF LAND AND GOODS,
must be proved entirely in the Probate Court, I. 468.

WILL.—*Continued.*
when probate evidence to prove the devise of the land, I. 378, 469, 667.
when it is doubtful whether the property is all freehold, probate ought to be granted, I. 470.
mode of getting the will itself out of the registry of the Probate Court for the purposes of evidence, I. 469, 470.

HOLOGRAPHIC WILL, I. 147 n., 159 n.

WILLS ACT (1 Vict. c. 26). (*See* PREFACE AND STATUTE INDEX.)
does not enlarge class of bequeathable personalty, I. 3 n.

WINDING UP ESTATE. (*See* EXECUTOR, *duties of*, TRADE.)
executor allowed a year for the purpose, II. 695, 696, *et seq.*

WISHES,
of testator expressed in a will, when they create a trust, I. 155 n.

WITNESSES. (*See* EVIDENCE.)
subscribing,
speaking to testator's insanity, not conclusive, I. 43.
denying the execution of will may be contradicted, I. 146. (*See* too, I. 185, 424, 426.)
for a will of personalty made before Jan. 1, 1838... I. 115 n.
two necessary for all wills made on or after Jan. 1, 1838... I. 116.
number necessary in the United States, I. 118 n., 169 n.
"credible" or competent, I. 117 n., 118 n., 169 n.
what is sufficient acknowledgment of the testator's signature to, I. 116—124.
the attestation must be after the testator's signature, in the presence of both, I. 125—132.
must both attest the will simultaneously, I. 125.
in the presence of the testator, but not of each other, I. 125.
what is his presence, I. 130.
where the testator is blind, I. 132.
may attest by mark, or a guided hand, but not by seal, I. 134, 135.
of a will written on several sheets, I. 138.
in what part they must sign, I. 136.
when not to be found, I. 407.
witnesses to lost will, I. 456 n.
to nuncupative will, I. 168 n., 169 n.
a witness, also a legatee, loses his legacy, I. 403, II. 273—276, III. 427 n.
unless legacy on trust, II. 274 n.
so also wife or husband of, loses legacy, II. 276.
quære whether parol trust enforced in favor of, II. 838.
in testamentary causes,
not necessary to call both attesting witnesses, I. 407.
competency of, I. 404.
may be summoned and examined *vivâ voce*, I. 373 n., 404.
may be summoned to be examined as to knowledge of testator's family that executor may prove in solemn form, I. 357 n.
rules of evidence in common law courts to be observed in Probate Court, 21 & 22 Vict. c. 77, s. 33... I. 403.
neglecting to appear as,
action for, does not survive against executors, III. 228.

WORDS,
"accounts," II. 489 n.
"all estate," II. 461 n.
"all goods" in a particular place, II. 459—464, 762.
"all my estate and effects," II. 462 n.
"all my interest in the C. estate," II. 636 n.
"all my just debts," III. 166.
"all the residue," I. 265 n.
"all the rest," II. 328 n.

WORDS.—*Continued.*
"and," II. 335, 499 n., 503 n.
"all worldly goods," II. 469 n.
"annuity," II. 478—485.
"articles of domestic use and enjoyment," II. 470 n.
"appurtenances," II. 460 n.
"ascertained," II. 337.
"assigns," II. 499 n., *et seq.*
"at," II. 524.
"at the discretion of trustees," II. 531 n.
"at their death," II. 337.
"balance of estate," II. 461 n.
"books," II. 489. (*See* II. 469.)
"cash or monies so called," II. 473 n.
"chattels," II. 459.
"children," II. 340, 359—369.
"clear of all deductions," III. 92, 92 n.
"competent" in Succession Duty Act, III. 52 n.
"cousins," II. 375—377.
"crops," II. 471 n.
"culpable negligence," III. 660 n.
"debentures," II. 636 n.
"debts," II. 486—488.
"descendants," II. 391, 907 n.
"devise," I. 94 n.
"due course of administration," II. 404. (*See* II. 411 n.)
"effects," II. 459 n., 462 n., 468.
"eldest male descendant," II. 392.
"eldest son," II. 355, 356.
"entitled," II. 336, 557 n.
"estate," II. 461 n.
"et cetera," II. 466, 466 n.
"executors and administrators," II. 408, 411, *et seq.*
"exempted" in Succession Duty Act, III. 50 n.
"family," II. 404 n., 907.
"farming stock," I. 839, 839 n., II. 471, *ibid.*, n.
"first of all," II. 675 n.
"first son," II. 358 n.
"fixed furniture," II. 469 n., 470.
"for the time being," II. 403 n.
"foreign bonds," II. 475, *ibid.*, n.
"free of legacy duty," III. 91 n.
"freehold," II. 328 n.
"from and after," II. 526.
"goods," II. 459.
"goods and chattels in and about the house," II. 465.
"goods and other effects," II. 465, 466.
"goods and other things," II. 466.
"government," II. 423.
"grandchildren," II. 359, 370.
"great-grandchildren," II. 370.
"great-nephews and nieces," II. 373.
"having," II. 336.
"heirs," II. 378, 499 n., 501 n.
"heirs and assigns," II. 499 n.
"heirs of the body," II. 330, 378, *et seq.*
"hereinafter mentioned," II. 509 n.
"hereinbefore mentioned," II. 509 n.
"household effects," II. 470.
"household furniture," II. 468—470, 495 n.
"household goods," II. 464, 469 n.
"if," II. 336, 524.
"in case," II. 526.
"income," II. 478 n.
"in possession," II. 336.
"inhabitants," II. 423.

WORDS.—*Continued.*
"issue," II. 363 n., 386, *et seq.*, 907 n.
"jewels," II. 488.
"land and hereditaments," III. 118 n.
"last will and testament," I. 213 n., 214.
"leaving," II. 336.
"legacy," II. 473 n., 486 n., III. 91 n.
"legal personal representatives," II. 409, 410, *et seq.*
"linen and clothes," II. 490.
"live and dead stock," II. 471 n.
"loco parentis," II, 651.
"mariner or seaman," I. 172.
"medals," II. 490.
"military service," I. 171.
"money," II. 472—476.
"money in the funds," II. 475.
"money, property and effects," II. 468 n.
"nearest of kin in the male line," II. 402.
"necklaces," II. 488.
"nephews and nieces," II. 373.
"new assets," III. 575 n.
"next of kin," I. 496, II. 398, *et seq.*, 405 n.
"next surviving son," II. 336.
"notes," II. 489 n.
"not survive," II. 336.
"now," I. 260 n., II. 444 n., 763, 763 n.
"offspring," II. 389 n.
"on," II. 526.
"or," II. 335, 395 n., 499 n., 503.
"paid," II. 336. 515 III. 91 n.
"pay and distribute," II. 531 n.
"payable," II. 336, 515, 524, 584.
"pearls," II. 488.
"pecuniary legacy," III. 91 n.
"personal estate," II. 462 n.
"personal ornaments," II. 489.
"personal representatives," II. 408, 411, *et seq.*
"plant and goodwill," II. 471 n.
"plantations," II. 490.
"plate," II. 489. (*See* II. 466.)
"poor relations," II. 395.
"portraits," II. 490.
"posthumous child," II. 359.
"property," II. 459 n., 462 n., 467.
"provided," II. 526.
"ready money," II. 473 n.
"receivable," II. 336.
"relations," II. 395, 907 n.
"representatives," II. 409, 411, *et seq.*
"residuary legatee," II. 801 n.
"second son," II. 358 n.
"securities for money," II. 476.
"seized," II. 329 n.
"servants," II. 421.
"share," II. 462 n.
"share of estate," II. 462 n.
"shares," II. 476.
"stock," II. 476. (*See* II. 473, 474, 476 n., 636 n.)
"stock in trade," II. 471 n.
"stock upon my farm, I. 839, II. 471.
"support," II. 483 n.
"survivor," II. 336, 814—816.
"then," II. 403 n., 812 n.
"to be born," II. 342 n.
"unmarried," II. 363, 364, *ibid.*, n., 590.
"utensils," II. 472.

WORDS.—*Continued.*
"vested," II. 336 n., 557.
"wearing apparel," II. 490 n.
"when," II. 524.
"wife," II. 371, 433, 434.
"without having been married," II. 364 n., 400 n.
"without having issue," II. 336.
"younger branches of a family," II. 407.
"younger children," II. 355.

WORK AND LABOR,
by executor, as such, he may declare for, II. 79, 80.
action for, does not lie against executor, III. 292.

WORKING CLASS DWELLINGS,
devise of land for, exempted from Mortmain Act to extent of five acres, II. 291.

WORKMAN,
rights of representatives of, for death by accident, II. 8, *et seq.* (*See* CAMPBELL'S ACT, EMPLOYERS' LIABILITY ACT.)
wages of, when entitled to preferential payment, II. 222, *ibid.*, n.

WRECKED GOODS,
recoverable by executor within a year and a day after seizure thereof as wreck, II. 49.

WRIT,
endorsement of, must show representative character of plaintiff or defendant, III. 452.
of summons, how long it remains in force, III. 530.
if renewed will prevent Statute of Limitations running, III. 530.
in administration action, how it should be entitled, III. 487.
by journey's accounts, III. 460, 531.
or originating summons, proceedings by in Chancery Division, III. 486. (*See* REMEDIES.)

WRITING. (*See* HANDWRITING.)
only revoking a will or codicil, whether it should be admitted to probate, I. 179 n. (*See* WILL, *revocation.*)

YORK,
distribution under custom of, abolished since December 31st, 1856. . .II. 929.

YOUNGER CHILD,
when considered an eldest, II. 355, *et seq.*
when an eldest considered, II. 357, 358.

THE END.

Stanford Law Library
3 6105 063 555 309
NIVERSITY LAW LIBRARY